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Attorney for Petitioner

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ADRIAN RISKIN,

Petitioner,

vs.

HOLLYWOOD MEDIA DISTRICT PROPERTY
OWNERS ASSOCIATION,

Respondent.

Case No. BS166075

(Dept. 82, Hon. Mary Strobel, presiding)

**PETITIONER'S NOTICE OF MOTION AND
MOTION FOR AWARD OF ATTORNEY'S
FEES; MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATIONS OF
COLLEEN FLYNN AND CAROL A. SOBEL**

Date: Tues., July 17, 2018 [RESERVED]

Time: 8:30 a.m.

Dept.: 82

TO RESPONDENT AND ITS ATTORNEY OF RECORD:

PLEASE TAKE NOTICE that on July 17, 2018, at 8:30 a.m., or as soon thereafter as counsel may be heard, in Department 82 of the above-entitled Court, located at 111 N. Hill Street, Los Angeles, California, Petitioner will move the Court for an order compelling Respondent Hollywood Media District Property Owners Association to pay Petitioner's attorney's fees incurred in the prosecution of this action. The amount requested is \$48,360.00 in fees.

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1 This motion shall be pursuant to Cal. Gov't Code §§ 6258 and 6259(d), and shall be based on the
2 accompanying points and authorities, Declaration of Colleen Flynn, the records and files of this
3 matter, and whatever other matter may be presented at the time the motion is heard.

4 DATED: May 23, 2018

5 **COLLEEN FLYNN**
6 Attorney for Petitioner

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8 By /s/Colleen Flynn
9 Colleen Flynn
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MEMORANDUM OF POINTS AND AUTHORITIES

1. Case Background and Relief Requested.

Petitioner requested certain emails to and from the Hollywood Media District Property Owners Association's ("Media District") executive director, Lisa Schechter, over a six month period, from early-September 2015 to mid-March 2016. *See* Exhibits A & E to Verified Petition filed November 14, 2016 (Petitioner Riskin's December 8, 2015 and March 18, 2016 emails to Media District attorney Jeffrey Briggs).

The Court subsequently ordered the Media District to "provide access to, or produce copies of, the following public records previously designated as exempt:

- 1) All emails withheld pursuant to the Deliberative Process Privilege;
- 2) All emails withheld pursuant to the Drafts exemption;
- 3) All emails withheld pursuant to the Personnel Privacy exemption, redacted to exclude private personnel health information (2/15/16 email) and volunteer's address (2/29/16 email), which is exempt." *See* Judgment filed March 5, 2018.

As this lawsuit resulted in an order of disclosure of public records Petitioner is entitled to an award of attorney fees and costs. *Beth v. Garamendi* (1991) 232 Cal.App.3d 896, 901-02.

2. Petitioner Is Entitled to a Mandatory Award of Attorney Fees.

The California Public Record Act, Section 6259(d) states the "court shall award court costs and reasonable attorney fees to plaintiff should the plaintiff prevail in litigation filed pursuant to this section." Petitioner is entitled to a mandatory award; the Court found the Media District to be improperly designating public records as exempt and ordered their disclosure. On February 12, 2018, Jeffrey Briggs, attorney for the Media District, provided the records via email, in two batches. *See* Declaration of Colleen Flynn, ¶2, ("Flynn decl.") filed concurrently herewith. Because the Court

ordered the disclosure, Petitioner is the prevailing party. *Beth v. Garamendi*, 232 Cal.App.3d at 901-02; *Los Angeles Times v. Alameda Corridor Transportation Authority* (2001) 88 Cal.App.4th 1381, 1391.

Petitioner sought to resolve the matter of fees informally with the Media District. On March 16, 2018, counsel for Petitioner spoke with counsel for the Media District, making an offer to resolve fees and inviting a counter-offer. Flynn decl. ¶3. To date, the Media District has not substantively responded to Petitioner's offer of settlement. Flynn decl. ¶3.

3. Amount of Fees and Costs Sought.

Petitioner recognizes he did not prevail in obtaining an additional search for responsive records. Therefore, in calculating his recoverable time he excludes time spent on discovery, including written discovery and Ms. Schechter's deposition, an approximately 20% decrease in time, as that effort went primarily towards the request for a new search. He also deducts the costs of the deposition.

The requested fees are as follows:

Attorney	Hours Spent	Hours Anticipated for Reply & Hearing	Hourly Rate	Total (hrs x rate)
Colleen Flynn	71.9	2.5	\$650	\$48,360.00

Counsel's contemporaneously recorded time records are attached hereto as **Exhibit A** to Flynn decl. Evidence establishing the reasonableness of the requested hourly rate is attached hereto in the declaration of counsel and the declaration of Carol A. Sobel.

4. Conclusion.

For the foregoing reasons, this Court should issue an Order directing Respondent Media District to reimburse Petitioner for his fees and costs in the amount of \$ 48,360.00.

1 DATED: May 23, 2018

2 Respectfully Submitted,
3 LAW OFFICE OF COLLEEN FLYNN
4 Attorney for Petitioner

5 /s/ Colleen Flynn
6 COLLEEN FLYNN
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DECLARATION OF COLLEEN FLYNN

I, COLLEEN FLYNN, declare as follows:

1. I am the attorney representing Petitioner, Adrian Riskin. Except where expressly noted, I have personal knowledge of the following facts, and if called as a witness, could and would competently testify to their truth. I make this declaration in support of Petitioner's Notice of Motion and Motion for Award of Attorney's Fees and Costs.

2. On February 12, 2018, Jeffrey Briggs, attorney for the Media District, emailed me the records which the Court had ordered disclosed. He sent me two emails, each containing a batch of the records his clients were ordered to disclose. I then forwarded them to my client, Mr. Riskin.

3. On March 16, 2018, I spoke with Jeffery Briggs, attorney for the Media District. I made an offer on Mr. Riskin's behalf to resolve the matter of fees informally and invited a counter-offer. To date, the Media District has not substantively responded to Petitioner's offer of settlement.

Qualifications/Experience

4. I received a Juris Doctor Degree from Southwestern University School of Law in 2004. I have been admitted to practice law in the State of California since 2004. I was admitted to practice in the Northern District of California in 2004, the Central District of California in 2006, and the 9th Circuit in 2013.

5. I attended and graduated *Cum Laude* from Southwestern, where I was also a member of Law Review. While in law school I served as a judicial extern for Judge Harry Pregerson of the Ninth Circuit Court of Appeals. I also externed for Judge Juan Carlos Maqueda of the Corte Suprema de Justicia de la Nación de Argentina (Supreme Court of Argentina).

6. Upon graduating from law school, from September 2004 to July 2005, I worked in San Francisco at the Law Office of Dennis Cunningham, which specializes in police misconduct matters.

1 7. From September 2005 through May 2007 I was employed by the Law Office of
2 Robert Mann and Donald W. Cook, where I worked mainly on federal civil rights class action cases
3 involving jail conditions and police issues.

4 8. In May 2007 I began a sole practice in Los Angeles where I continue to co-counsel on
5 such cases. I also handle criminal cases, mainly for political activists.

6 9. From June 2009 to March 2010, along with my sole practice, I maintained a part-time
7 position as a detention attorney with Catholic Charities, working with detainees impacted by the
8 intersection of immigration and criminal laws.

9 10. From September 2015 to May 2016, along with my sole practice, I maintained the
10 part-time position of Interim Executive Director of the National Lawyers Guild, Los Angeles
11 Chapter.

12 11. I have participated in a significant amount of federal and state court litigation,
13 including open government laws such as the California Public Records Act (“CPRA”) and federal
14 Freedom of Information Act (“FOIA”). I am currently co-counsel on FOIA suit *Poulsen v. United*
15 *States Dep’t of Defense, Office of the Director of National Intelligence, and Department of Justice*,
16 Case No. CV 17-3531 WHO (seeking records related to the alleged electronic surveillance of
17 Donald Trump during the 2016 election campaign). I was lead counsel on FOIA suit, *Marguerite*
18 *Hiken and the Military Law Task Force v. Dep’t of Defense and United States Central Command*,
19 836 F.3d 1037 (9th Cir. 2016) (“*Hiken v. DOD*”) (reversing District Court’s below-market fee
20 award); 521 F.Supp.2d 1047 (N.D. Cal. 2007) (Agency’s *Vaughn* Index was inadequate; *in camera*
21 review of documents warranted, resulted in the release of thousands of pages of documents and a
22 \$110,000 fee settlement).

23 12. I was also lead counsel on CPRA case *Stop LAPD Spying and NLG-LA v. City of Los*
24 *Angeles*, Case No. BS 172216 (Judge Chalfant) (2017 settlement included City’s release of
25 requested documents and \$30,000 in attorney fees).

26 13. I am currently co-counsel on *Amador, et al. v County of Los Angeles*, CV 10-1649
27 SVW (RCx) (class-action challenging unlawful strip searches of females in the Los Angeles County
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1 Jails) and *Chua et al. v. City of Los Angeles, et al.*, CV 16-0237 JAK (GJSx) (class-action against
2 Los Angeles Police Department for civil rights violations). I have also co-counseled on *Aichele et al.*
3 *v. City of Los Angeles et al.*, CV 12-10863 DMG (FFMx) (class-action against Los Angeles Police
4 Department for civil right violations; settled for approximately \$2.6 million); *Craft v. County of San*
5 *Bernadino*, Case No. EDCV 05-0359 (SGL) (class-action challenging unlawful strip searches in the
6 SB County Jails; settled for approximately \$26 million); *Multi-Ethnic Immigrant Workers Network*
7 *v. City of Los Angeles*, (C.D. Cal., CV 07-3072 AHM (FMMx)) (“MIWON”) (class action against
8 the Los Angeles Police Department for attack on immigrant rights rally; settled for approximately
9 \$12 million); and *Camarillo, et al. v. City of Maywood et al.*, CV 07-3469 ODW (SHx) (multi-party
10 suit against City of Maywood for systemic police brutality, corruption and misconduct; led to the
11 dissolution of the police department). I was also lead counsel in a federal False Claims Act case,
12 *United States of America and State of California ex rel., Shelby Eidson v. Aurora Las Encinas*
13 *Hospital et al.*, Case No. CV 10-1031 JAK (RZx) (health care whistleblower client; settled in 2014
14 for confidential amount).

15 14. Aside from paid work, I have contributed numerous pro bono hours through my work
16 with the National Lawyers Guild representing protestors arrested for civil disobedience and have
17 assisted low-income individuals with matters for which they cannot afford representation.

18 ***Time Spent***

19 15. I have maintained contemporaneous time records using computer program Excel,
20 describing with particularity the amount of time devoted to each task. Attached as **Exhibit A** is a
21 true and correct copy of my detailed time-sheet accurately reflecting the hours I spent on this
22 lawsuit, to the best of my ability, which I recorded contemporaneously. These hours are not inclusive
23 of all the hours I have worked on this case, as there were numerous times that I failed to record my
24 hours. Those hours have not been reconstructed – and are not listed in the totals here.

25 16. In 2016, I was awarded fees at a rate of \$590 per hour in *Hiken v. DOD*, Case No. 13-
26 17073, (Dkt. No. 42, filed 11/30/16). In 2015, I was awarded fees at a rate of \$400 per hour for work
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1 done between 2007 and 2010 in *Camarillo v. City of Maywood*, CV 07-3469 ODW (SHx). In 2009, I
2 was awarded fees at the rate of \$350 per hour in the *MIWON* matter.

3 17. On behalf of Petitioner, I request the Court award an hourly rate of \$650 for my time
4 in this matter. I base this amount on the opinion of attorney Carol Sobel. Ms. Sobel is familiar with
5 hourly rates awarded to attorneys whose experience is comparable to mine. The declaration of Ms.
6 Sobel is filed herewith. See Sobel Decl. at ¶¶10, 21.

7 18. I am requesting \$ 48,360.00 in attorney's fees.

8 I declare under penalty of perjury that the foregoing is true and correct and was executed on
9 this 23 day of May, 2018 at Los Angeles, California.

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12 COLLEEN FLYNN
13 DECLARANT
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Time Sheet - Colleen Flynn - Adrian Riskin v. Hollywood Media District BID - PRA

DATE	NAME	ACTION	DESCRIPTION	TIME	TIME w/ DEDUCT IONS
8/24/2016	Flynn	mtg w/ Adrian Riskin	Re: discuss filing complaint; review	2	2
8/25/2016	Flynn	draft doc; email Adrian	Retainer agreement	0.2	0.2
8/25/2016	Flynn	review Adrian email;			
8/25/2016	Flynn	respond	Re: retainer agreement	0.1	0.1
10/27/2016	Flynn	draft doc	PRA petition	2.5	2.5
			Re: PRA petition; review emails b/w Riskin & Briggs &		
10/30/2016	Flynn	review correspondence; draft doc	correspondence b/w Flynn & Briggs between Dec 2016 & July 2016	3.2	3.2
10/31/2016	Flynn	review Riskin email; draft doc	Review client's edits & suggestions, update doc, resend	0.4	0.4
11/13/2016	Flynn	coordinate w/ Riskin	Re: review petition & verification; sign & return verification	0.2	0.2
11/13/2016	Flynn	finalize doc	PRA petition & exhibits	0.3	0.3
11/13/2016	Flynn	prepare docs	Civil Case cover sheet & summons	0.2	0.2
11/14/2016	Flynn	email Riskin	Re: filing of complaint & next steps	0.1	0.1
11/21/2016	Flynn	prepare doc	Notice of filing of POS of summons	0.1	0.1
11/21/2016	Flynn	review, calendar & serve doc	Re: Notice of trial setting conference	0.2	0.2
11/21/2016	Flynn	email Riskin	Re: trial setting conf & case updates	0.1	0.1
12/8/2016	Flynn	review Briggs email; reply	Re: service & response deadline	0.1	0.1
12/21/2016	Flynn	email exchange w/ Briggs	Re: Briggs request for extension to answer; said yes	0.1	0.1
12/22/2016	Flynn	email exchange w/ Adrian; review docs	Re: docs produced in response to Aug 2016 PRA request that should have been turned over in response to Nov 2015 PRA; review docs produced	0.3	0.3
1/27/2017	Flynn	draft docs	R4P, Rogs, Requests for Admissions	2.7	0
2/12/2017	Flynn	email exchange w/ EFF	Re: email systems	0.2	0
2/13/2017	Flynn	tel calls w/ email experts	Re: email systems, ISPs, DNS, MX records, etc. for discovery	1.9	0
2/13/2017	Flynn	finalize docs	R4P, Rogs, Depo notices, including tech definitions	2	0
2/13/2017	Flynn	prepare for court	review dates for discovery/briefing schedule; review petition & answer	0.5	0
2/14/2017	Flynn	court appearance	trial setting conference - Dept 82 at Mosk, Judge Strobel	1.5	1.5

Ex A to Flynn Decl.

HOURS

2/14/2017	Flynn	tel call to Riskin	Re: trial setting conf & next court date	0.1	0.1
2/16/2017	Flynn	email to Riskin	Sent discovery I served at court review City of San Jose v. Sup Ct. Santa Clara Cnty re statutory construction; actual or constructive possession	0.1	0
3/3/2017	Flynn	research	Re: court reporter for depositions	0.3	0.3
3/14/2017	Flynn	email Adrian Riskin	Re: request to respond to discovery late; says computer hacked & he's locked out	0.1	0
3/15/2017	Flynn	tel call from Jeff Briggs	Re: rescheduling Lisa Schecter/PMK depo	0.1	0
3/20/2017	Flynn	review email from Jeff Briggs; reply	Media District responses to discovery	0.1	0
3/24/2017	Flynn	review docs	Re: Media District response to discovery	0.3	0
3/24/2017	Flynn	exchange msgs w/ Riskin	Re: Media District response to discovery	0.1	0
3/24/2017	Flynn	tel call w/ Riskin	Re: Media District response to discovery	0.1	0
4/2/2017	Flynn	draft doc	Questions for Schecter/PMK depo	0.6	0
4/2/2017	Flynn	tel call w/ Riskin	Re: prep for Schecter depo	0.4	0
4/3/2017	Flynn	prepare for Lisa Schecter depo	Re: computers, server, network; review discovery responses & docs produced	2	0
4/4/2017	Flynn	exchange emails w/ court reporter	Re: depo tomorrow	0.1	0
4/4/2017	Flynn	prepare for Lisa Schecter depo	review docs incl. dates of requests, responses, emails produced in discovery, prepare questions, review exhibits to petition, petition & answer	4.3	0
4/5/2017	Flynn	prepare for Lisa Schecter depo	review questions, rogs, docs	0.7	0
4/5/2017	Flynn	depo	Lisa Schecter re searches, docs produced, problems w/ email system	1.5	0
4/5/2017	Flynn	tel call w/ Riskin	Re: Lisa Schecter depo	0.2	0
4/5/2001	Flynn	tel msg to Jeff Briggs; call from Briggs	Re: request Lisa Schecter run new search	0.1	0.1
4/5/2017	Flynn	email exchange w/ Briggs	Re: request he tell me which emails in Ex L to Petition he thinks are not public records	0.1	0.1
4/6/2017	Flynn	tel call to Riskin	Re: confirming all of Briggs' productions of responsive docs 3/21/16, 3/27/16, 6/30/16 & details re contents of the productions	0.2	0.2
4/10/2017	Flynn	prepare for court	review file; review calendar/dates	0.2	0.2

Ex A to Flynn Decl.

HOURS

4/11/2017 Flynn	court appearance	Trial setting conference - Dept 82 at Mosk, Judge Strobel; incl travel; & conf w/ Briggs re conducting new search; he said yes	1.5	1.5
4/11/2017 Flynn	email to Briggs	Re: consent to electronic service; running new search; which emails in Ex L he thinks are not public records	0.1	0.1
4/11/2017 Flynn	email exchange w/ Riskin	Re: updates from trial setting conf	0.1	0.1
5/3/2017 Flynn	review doc; email exchange w/ client	Re: Lisa Schecter depo trx	0.3	0
5/18/2017 Flynn	review Jeff Brigg email	Re: corrections to Lisa S. depo trx	0.1	0
9/10/2017 Flynn	research & review docs	Prepare to draft PRA compel motion	0.4	0
9/17/2017 Flynn	draft doc	start brief	0.7	0.7
9/18/2017 Flynn	review docs; draft doc	Review Schechter depo trx; changes to depo trx; emails b/w Briggs & Adrian (letting Adrian see non-redacted files); draft brief & decs	1.8	1.8
9/24/2017 Flynn	draft doc	Draft brief & decs; review discovery responses & depo trx; email exchanges	3.4	3.4
9/26/2017 Flynn	review Jeff Briggs email; reply	Re: new search, exemptions, segregation,	0.1	0.1
9/27/2017 Flynn	draft doc	Draft brief & decs	2.2	2.2
9/27/2017 Flynn	review Jeff Briggs email; reply	Re: Media District BID conducted new search	0.1	0.1
9/27/2017 Flynn	draft doc	Draft brief & decs	1	1
9/27/2017 Flynn	review Jeff Briggs email & attached docs	Re: Media District BID conducted new search	0.1	0.1
9/27/2017 Flynn	mtg w/ Adrian Riskin	Re: review brief & dec & exhibits	0.7	0.7
9/27/2017 Flynn	draft docs	Brief & decs & AR	2	2
9/28/2017 Flynn	finalize docs	Brief & decs & AR	1.4	1.4
9/28/2017 Flynn	mtg w/ Adrian Riskin	Re: review brief & dec & exhibits & sign dec & review case questions	0.3	0.3
9/28/2017 Flynn	email to Jeff Briggs	Serving brief & AR	0.1	0.1
10/28/2017 Flynn	review docs	Respondent's opposition & supporting docs	0.5	0.5
10/28/2017 Flynn	tel call w/ Riskin	Re: opposition & reply	0.2	0.2
11/1/2017 Flynn	email Shayla Myers			
11/1/2017 Flynn	LAFLA	Re: Riskin website	0.1	0.1
11/1/2017 Flynn	review docs; outline arguments	Opposition & supporting docs	0.8	0.8

	send msgs to Enrique R. doc film maker & John & Henriette - LA			
11/1/2017 Flynn	Poverty Dept email to Eric Ares, LA	Re: supporting decs	0.1	0.1
11/2/2017 Flynn	CAN	Re: Riskin website	0.1	0.1
	interview John			
11/2/2017 Flynn	Malpede, LA Pov Dept	Re: use of Riskin emails/website	0.2	0.2
11/2/2017 Flynn	draft doc	John Malpede decl	0.2	0.2
11/12/2017 Flynn	drafts doc	Reply brief & Riskin decl	3.2	3.2
11/13/2017 Flynn	draft docs	Reply brief & Riskin decl	3.5	3.5
11/13/2017 Flynn	email Briggs prepare for hearing;	Serve Reply brief & Supp AR	0.1	0.1
11/26/2017 Flynn	outline arguments	Re: hearing on petition	1.6	1.6
		Re: hearing on petition - review		
11/27/2017 Flynn	prepare for hearing;	cases, statutes, depo trx, decs,		
11/28/2017 Flynn	outline arguments	prepare arguments	3.4	3.4
11/28/2017 Flynn	court appearance	PRA trial	1.8	1.8
11/28/2017 Flynn	post hearing mtg w/ client	Re: court's ruling & next steps	0.3	0.3
		Re: giving him all the files they		
		produced since it didn't sound like		
11/28/2017 Flynn	tel call to Jeff Briggs	he had them	0.1	0.1
11/28/2017 Flynn	email court reporter	Re: trx of this morning's hearing	0.1	0.1
	email exchange w/ court reporter & client			
12/4/2017 Flynn		Re: payment for hearing trx	0.1	0.1
		Re: sent Jeff link to all files he's		
		produced to Adrian & memorializing		
12/4/2017 Flynn	email Jeff Briggs	11/28 call	0.1	0.1
		Review minute order; Draft Notice		
12/4/2017 Flynn	review doc; draft doc	of ruling & notice of status conf	0.2	0.2
	review Jeff Briggs			
	email; update case	Re: Briggs received the files on		
12/8/2017 Flynn	notes	DropBox	0.1	0.1
		Re: BID's claimed exemptions -		
		attny/client, work product, drafts,		
		deliberative process; outline supp		
1/16/2018 Flynn	research; outline doc	brief	2.5	2.5
		Re: supp brief; facts for dec re		
1/16/2018 Flynn	tel call w/ Riskin	Briggs continued non-compliance	0.2	0.2
		Review hearing trx; Briggs dec;		
1/18/2018 Flynn	review docs; draft doc	Respondent Opp; draft Supp brief	2.6	2.6
		review Briggs decs & BID emails		
		turns out Briggs previously		
	review docs; draft doc;	produced but is now claiming		
1/22/2018 Flynn	tel call & email	exempt; draft supp reply brief; talk		
	exchange w/ Riskin	to Riskin about decl	1.7	1.7
	draft doc; email w/ Riskin			
1/23/2018 Flynn		Re: Riskin declaration	0.2	0.2

Ex A to Flynn Decl.

HOURS

1/23/2018 Flynn	review docs; draft docs; exchange emails w/ Briggs	Review Tentative, Briggs emails, Shechter dec & depo trx; hearing trx; email Briggs re log/index; draft supp brief & Riskin decl Supp brief; research deliberative process privilege, drafts, attny-client & attny work product privileges; personnel privacy	3.5	3.5
1/24/2018 Flynn	draft doc; research; review Briggs' decl w/ claimed exemption draft dec; mtg w/ Riskin		3.2	3.2
1/24/2018 Flynn	Riskin	Review dec & supp brief w/ client	0.7	0.7
1/24/2018 Flynn	draft doc; draft Flynn decl	edit/finalize brief; draft Flynn dec; review/add exhibits to decs	2	2
1/25/2018 Flynn	email Jeff Briggs	Re: service of Supp Brief	0.1	0.1
1/29/2017 Flynn	prep for hearing	Re: status conf; prep arguments, review briefs, hearing trx, depo trx, declarations & exhibits	2	2
1/30/2017 Flynn	court appearance	Re: status conf; post-court mtg w/ client	2.3	2.3
2/7/2018 Flynn	prepare & serve doc	Notice of Ruling; review minute order	0.2	0.2
2/7/2018 Flynn	draft doc; email Jeff Briggs; email Riskin	Re: Proposed Judgment; review minute order	0.3	0.3
2/9/2018 Flynn	email exchange w/ Briggs	Re: final judgment	0.1	0.1
2/9/2018 Flynn	draft ltr to clerk; email copy to Briggs	Re: proposed judgment	0.1	0.1
2/13/2018 Flynn	review Briggs email & attachments; email exchange w/ Riskin	Docs ordered disclosed	0.2	0.2
2/16/2018 Flynn	review Briggs email & attached doc	Re: Respondent's objections to Petitioner's proposed judgment	0.1	0.1
2/16/2018 Flynn	email exchange w/ Riskin	Re: Respondent's objections to Petitioner's proposed judgment	0.1	0.1
3/13/2018 Flynn	review Briggs email; reply		0.1	0.1
3/14/2018 Flynn	draft doc	Re: attny fees	0.1	0.1
3/14/2018 Flynn	call clerk	Memorandum of Costs	0.1	0.1
3/16/2018 Flynn	call w/ Briggs	Re: reserve motion hearing date	0.1	0.1
3/16/2018 Flynn	email Briggs	Re: timing of fee mtn; memo of costs; possible settlement (also spoke .2 about EhwdBID)	0.2	0.2
4/9/2018 Flynn	review Briggs email; reply	Re: memorializing call & serving memo of costs	0.1	0.1
4/12/2018 Flynn	review Briggs email; reply	Re: Respondent can't respond to attny fee offer until mid-May; stip to extend date to file mtn	0.1	0.1
		Re: Respondent can't respond to attny fee offer until mid-May; proposed dates for stip to extend date to file mtn	0.1	0.1

4/12/2018 Flynn	review Briggs email; draft doc; email Briggs	Re: stip to extend time to file attny fee mtn	0.3	0.3
4/12/2018 Flynn	review Briggs email; email Briggs; review reply	Re: finalize stip & serve Re: resolving fees - he still doesn't have a response to my 3/16 offer to settle fees	0.1	0.1
5/10/2018 Flynn	email exchange w/ Briggs	Re: entitlement to fees	0.1	0.1
5/15/2018 Flynn	research	Motion for fees	0.4	0.4
5/15/2018 Flynn	draft doc	Motion for fees; dec	0.8	0.8
5/16/2018 Flynn	draft docs		1.5	1.5
5/16/2018 Flynn	email exchange w/ Carol Sobel	Re: fee dec re requested rate	0.1	0.1
5/17/2018 Flynn	review Jeff Briggs email; reply	Re: still no response to my offer to settle fees	0.1	0.1
5/17/2018 Flynn	email exchange w/ Riskin	Re: status of attny fees	0.1	0.1
5/22/2018 Flynn	email exchange w/ Riskin	Re: client questions re hearing on fee motion	0.1	0.1
5/23/2018 Flynn	email exchange w/ Carol Sobel; review documents; update doc	Re: Sobel decl re rates, update brief	0.4	0.4

TOTAL HOURS: 90.7

TOTAL REQUESTED: 71.6

1 **DECLARATION OF CAROL A. SOBEL**

2 I, CAROL A. SOBEL, declare:

3 1. I am an attorney admitted to practice in the State of California and the
4 United States District Court for the Central District of California. I make this
5 declaration in support of Plaintiffs' request for an award of attorneys' fees. The
6 declaration is based on facts of which I have personal knowledge. If I were called
7 to testify as a witness to these facts, I could and would do so competently.

8 2. I was admitted to the California Bar in December 1978, following my
9 graduation from law school in May of 1978. For 20 years, I was employed by the
10 ACLU Foundation of Southern California, including approximately 12 years as its First
11 Amendment attorney. For the last seven years prior to my departure from the ACLU,
12 I served as a Senior Staff Counsel. I left the ACLU to begin a private civil rights
13 practice in late April, 1997. Attached at Exhibit "1" is my current resumé.

14 3. My billing rate for 2018 is \$990 an hour. I settled the fees in several cases
15 in 2017, applying my the current rate of \$975 an hour to calculate the lodestar,
16 including the fees in *Schuler v. County of Orange*, 8:17-cv-00259 DOC KES (C.D.
17 Cal. 2017). I did not file a motion for fees in 2016. In 2014 and 2015, several
18 courts approved my rate of \$875 an hour. In *Desertrain v. City of Los Angeles*, 754
19 F.3d 1147 (9th Cir. 2014), the Circuit granted the motion for fees, approved
20 entitlement, and referred the matter to the Appellate Commissioner to determine the
21 final award. The parties then settled the trial court and appellate fees together with
22 only an approximately 5 percent reduction of the appellate lodestar. In a second case
23 in 2015, the Circuit panel approved the full award at \$875 an hour. See *CPR for*
24 *Skid Row v. City of Los Angeles*, 779 F.3d 1098 (9th Cir. 2015).

25 4. In 2012, I was paid my then full rate of \$795 an hour by an insurance
26 carrier in a non-contingency case before the Hon. Dean Pregerson of the Central
27 District of California. *Federal Deposit Insurance Company v. Larry B Faigin*,
28 2:12-cv-03448-DDP-CW (C.D. Cal. 2012). In 2010, I was awarded fees at \$725 an

1 hour in *Long Beach Area Peace Network v. City of Long Beach*, 574 F.3d 1011
2 (9th Cir. 2009), a First Amendment case. In 2009, I was awarded fees by the District
3 Court at \$710 an hour in *Fitzgerald v. City of Los Angeles*, 2009 U.S. Dist. LEXIS
4 34803 (CD Cal. 2009), and in *Multi-Immigrant Worker Organizing Network*
5 (*“MIWON”*) *v. City of Los Angeles*, cv 07-7032 AHM, both police misconduct cases.
6 In 2008, I was awarded fees at \$695 an hour in *Jones v. City of Los Angeles*, cv-
7 03-1142 R. *See* 444 F.3d 1118 (2006), vacated per settlement 505 F.3d 1006 (9th
8 Cir. 2007). The fee award was affirmed on appeal. 2014 U.S. App. LEXIS 1952
9 (9th Cir. Jan. 31, 2014).

10 5. My practice involves complex civil rights litigation and class actions,
11 focusing primarily in the areas of the rights of homeless persons, First Amendment
12 rights and police practices. My experience includes a substantial amount of anti-
13 SLAPP litigation and FOIA/PRA litigation. Previously, I also did a substantial
14 amount of employment litigation, but no longer do so. I have received several
15 awards for my legal work over the years. In 2008, I was named a California Lawyer
16 of the Year (CLAY) recipient for civil rights by California Lawyer Magazine and
17 that same year was also named in the Top 75 Women Litigators in California by the
18 Daily Journal Corporation. In 2007, I received an Angel Award from California
19 Lawyer Magazine for pro bono work. I also was named in 2007 by the Daily
20 Journal as one of the Top 100 Most Influential Lawyers in California. In 2013 and
21 again in 2017, I was named one of the top women lawyers in Los Angeles. I have
22 been named as a SuperLawyer in the area of First Amendment and civil rights
23 litigation for more than a decade. Additional recognition of my legal work is set
24 forth in my attached resumé.

25 6. I have been qualified twice as an expert to testify at trial on
26 issues concerning non-profit legal practice: once before the State Bar and once in
27 Los Angeles Superior Court. Recently, in an appeal of a fee award, the Second
28 Appellate District noted my qualification as an expert to opine on reasonable

1 market rates for attorney fees. See *Jochimsen v. County of Los Angeles*,
2 B223518 (2d Dist. June 23, 2011) (unpublished) (approving expert basis for
3 opinion). My declarations and the supporting evidence of reasonable market rates
4 have been repeatedly cited favorably by federal and state courts in awarding fees.
5 For example, in *Nadarajah v. Holder*, 569 F.3d 906, 912-914 (9th Cir. 2009), the
6 Ninth Circuit referenced my declaration with approval in support of the application
7 of attorneys from the ACLU for fees under the Equal Access to Justice Act
8 (“EAJA”). In *Torrance Unified School District v. Magee*, 2008 U.S. Dist.
9 LEXIS 95074 (CD CA 2008), granting fees pursuant to the federal IDEA statute,
10 20 U.S.C. §1415(i)(3)(c), the Court cited to my declaration as persuasive evidence
11 of market rates. In *Atkins v. Miller*, CV 01-01574 DDP (CD CA 2007), this Court
12 awarded fees to a 1975 graduate at \$675 an hour, specifically citing to my
13 declaration and that of Barry Litt to support the requested rates. *Id.* at pp. 8-9 and
14 n.4. Additional cases in which my declarations have been cited favorably include,
15 among others, *Charlebois v. Angels Baseball LP*, SACV 10-0853 DOC (May 30,
16 10 2012); *Orantes-Hernandez v. Holder*, 713 F.Supp.2d 29, 963-964
17 (C.D.Cal.2010); *Hiken v. DOD*, 2013 U.S. Dist. LEXIS 118165 (N.D. Cal. Jan.
18 14, 2013); *Hiken v. DOD*, 836 F.3d (9th Cir. 2016); *Vasquez v. Rackauckas*,
19 2011 U.S. Dist. LEXIS 83696 (C.D. Ca. 2011); *Rauda v. City of Los Angeles*,
20 2010 U.S. Dist. LEXIS 138837 (C.D. Cal. 2010); *Dugan v. County of Los*
21 *Angeles*, cv-11-08145 CAS (C.D. Cal. March 3, 2014); and *Flores v. City of*
22 *Westminster*, SA-CV-11-0278 DOC (C.D. Cal. Oct. 23, 2014). The most
23 recent decision approving rates based, in part, on my declaration is *Webb v.*
24 *Officer J. Ackerman*, 13-cv-01992 PLA (C.D. Cal. January 4, 2018), Doc.
25 180, p.5.

26 7. In addition, I have litigated statutory fee issues at the appellate level
27 in several of my cases. Most notably, I was lead counsel before the California
28 Supreme Court in *Tipton-Whittingham v. City of Los Angeles*, 34 Cal.4th 604

1 (2004), the companion case to *Graham v. Daimler-Chrysler*, 34 Cal.4th 533
2 (2004), establishing the continued vitality of the “catalyst” fee doctrine in
3 California courts. I was also lead counsel in *Jones v. City of Los Angeles*,
4 555 Fed. Appx. 659 (2014), establishing entitlement to fees as a “prevailing
5 party” based on the Ninth Circuit’s necessary approval of a settlement that
6 was conditioned on vacatur of the panel decision.

7 8. I have been asked to submit this declaration to attest to the
8 reasonableness of the fee rates requested by the counsel in this case. I am not
9 being compensated for my time in this matter.

10 9. I am very familiar with the qualifications, skill, experience and
11 reputation of attorney Colleen Flynn, for whom fees are sought by this motion.
12 I know Ms. Flynn since she was a law student and on that basis believe that she
13 is a 2004 law graduate. Over the course of the past decade or so, I co-counseled
14 several cases with her, including a recent Public Records Act case. In my
15 opinion, Ms. Flynn is very skilled and experienced in the area of public records
16 litigation, including a significant opinion in the Ninth Circuit in *Hiken v. DOD*,
17 cited in paragraph 6 of my declaration.

18 10. It is my opinion that the rate sought is reasonable for her. I base
19 my opinion on my familiarity with the Colleen Flynn’s skill and experience, past
20 fee awards she received, in addition to the fee awards and supporting
21 declarations I reviewed over the course of the past several decades, as described
22 more fully below, and the exhibits attached to my declaration in this instance.

23 11. I have extensive experience with the methodology applied to set
24 appropriate market rates for public interest and civil rights attorneys who do
25 not have paying clients. During the time that I was at the ACLU of Southern
26 California, I prepared numerous fee motions under federal and state fee-shifting
27 statutes for cases in which the ACLU represented the prevailing party. I
28 was responsible for preparing these motions in cases in which I was directly

1 involved in the underlying litigation, as well as in cases brought by other staff
2 attorneys and volunteer counsel for the ACLU.

3 12. In this role, I obtained information on market rates through a
4 variety of sources that I continue to use to evaluate reasonable rates each year.
5 I review current billing rates and fees sought by, and awarded to, attorneys at
6 large, commercial law firms to establish rates for individuals of comparable
7 experience at public interest and civil rights firms. The attorneys at large
8 commercial firms handle similarly complex federal litigation. In many
9 instances, they are also familiar with the experience levels of various non-
10 profit attorneys because they co-counsel cases with the public interest bar.

11 13. It is my practice to use rates at large, commercial firms to
12 establish market rates for civil rights lawyers based on the holding of the
13 U.S. Supreme Court in *Blum v. Stenson*, 465 U.S. 886, 895 (1984) (“The
14 statute and legislative history establish that ‘reasonable fees’ under [42 U.S.C.]
15 § 1988 are to be calculated according to the prevailing market rates in the
16 relevant community, regardless of whether plaintiff is represented by private or
17 nonprofit counsel”). *See also Nadarajah v Holder*, 569 F3d at 910.

18 14. To analyze reasonable market rates, I apply several additional
19 principles. First, when available, I look to rates awarded to the same attorneys
20 in previous cases because the courts have repeatedly held that such awards are
21 strong evidence of reasonable market rates. *See Chaudhry v. City of Los*
22 *Angeles*, 751 F3d 1096, 1111 (9th Cir. 2014); *U.S. v. \$28,000 in U.S. Currency*,
23 802 F.3d 1100, 1106 (9th Cir. 2015); *Camacho v. Bridgeport Fin., Inc.*, 523
24 F.3d 973, 976 (9th Cir. 2008). In this instance, I am aware that Ms. Flynn was
25 ultimately awarded fees in *Hiken* based on a 2016 rate of \$590 an hour.

26 15. Next, I look to evidence of billing rates by attorneys engaged in
27 similarly complex business litigation as an approved method of establishing
28 reasonable market rates for civil rights attorneys who do not regularly bill

1 clients on an hourly basis. This approach, approved in *Blum, supra*, recognizes
2 that almost all civil rights attorneys take cases on a contingency basis and are
3 not paid hourly for their services.

4 16. Third, I premise my opinion on the rule that the relative
5 “simplicity” or “complexity” of a case is reflected in the efficiency of hours,
6 not the lodestar rate of the attorney. See *Van Skike v Director, Office of*
7 *Workers’ Compensation Programs*, 557 F3d 1041, 1046 (9th Cir. 2009).
8 *Ketchum v. Moses*, 24 Cal. 4th 1122, 1138 (2001).

9 17. I estimate that I review more than 100 fee motions, fee awards,
10 and supporting declarations in the course of a year. My practice is to obtain this
11 information from court orders in the past year awarding statutory fees or
12 awarding fees as a discovery sanction. In addition, I subscribe to several
13 websites that report legal news. If I read about a case where there is likely to
14 have been a fee motion, I review the docket and obtain a copy of any fee
15 motion, supporting declarations and fee award from public sources, including
16 documents on PACER and state court websites.

17 18. Attached at Exhibit 2 is the recent decision in *Webb v. Officer*
18 *J. Ackerman*, 13-cv-09112-PLA (C.D. Cal. Jan. 4, 2018), Document 180. In *Webb*,
19 the Court approved the 2017 rate of \$650 an hour for Elliot Tiomkin, a
20 2006 law graduate. I provided a supporting fee declaration for Mr. Tiomkin, as
21 noted in the court’s opinion at p.5. In my view, based on my professional
22 interaction with attorney Flynn and my discussions with Mr. Tiomkin and
23 review of his credentials, Ms. Flynn is at least as skilled and experience as is
24 Mr. Tiomkin. She now has three years of additional experience and seeks the
25 same rate approved for Mr. Tiomkin in 2017. Applying a three percent increase,
26 Mr. Tiomkin’s 2018 rate of \$650 would be approximately \$690 for 2018, well
27 above the rate now requested by Ms. Flynn.

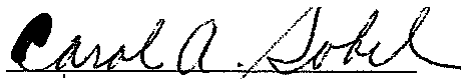
28 19. Attached at Exhibit 3 is the order approving fees in *Garcia v.*

1 LAUSD, Case 2:09-cv-08943-DMG-SH (C.D. Cal. 06/08/17 [Doc 443]. The
2 Court awarded fees to Matthew Strugar, a 2004 law graduate, at the 2017 rate of
3 \$660 an hour. Ex. 3, p. 18. In the same order, the Court approved the 2017 rate
4 of \$675 an hour for 2017 for Maronel Barajas. I provided supporting
5 declaration to the Disability Rights Legal Center (DRLC) in cases in which Ms.
6 Barajas was one of the counsel. In that context, I reviewed her credentials and
7 believe that she is a 2003 law graduate. Ms. Barajas had the same amount of
8 experience in 2017 as Ms. Flynn has now.

9 20. Attached at Exhibit 4 is the order approving fees in *Nozzi v. Housing*
10 *Authority of Los Angeles*, Case 2:07-cv-00380-PA-FFM (C. D. Cal. 2017).
11 Because the Court's Order did not set out the rates sought, attached at Exhibit 5
12 is a true and correct copy of the fee motion filed by Plaintiffs' counsel. [Doc.
13 403]. In the lodestar cross-check in *Nozzi*, the Court found the requested rates
14 reasonable. The 2017 rates included \$640 an hour for Stephanie Carroll, a 2004
15 law graduate at Public Counsel, and \$600 an hour for Stacey Brown, a 2006 law
16 graduate at Kaye, McLane, Bednarski & Litt. Ex. 5, pp. 19, 20.

17 21. Based on all of the foregoing and the attached exhibits, it is my
18 opinion that the rate of \$650 an hour sought by Plaintiff's counsel in this motion
19 is a reasonable rate of compensation in this case.

20
21 I declare under penalty of perjury that the foregoing is true and correct.
22 Executed on this 22nd day of May 2018, in Los Angeles, California.

23
24 
25 CAROL A SOBEL
26
27
28

CAROL A. SOBEL

725 Arizona Avenue • Suite 300 • Santa Monica, CA 90401 •
Tel. 310 393-3055 • Email carolsobellaw@gmail.com

Employment:

LAW OFFICE OF CAROL A. SOBEL
Solo civil rights law firm.

APRIL, 1997 TO PRESENT

SENIOR STAFF COUNSEL
ACLU Foundation of Southern California

1990 TO APRIL, 1997

Responsible for conducting civil rights and civil liberties litigation in state and federal courts in California;
supervise litigation by ACLU volunteer counsel and other ACLU legal staff.

STAFF ATTORNEY
ACLU Foundation of Southern California

1985 TO 1990

Civil liberties litigation, primarily in the areas of Establishment Clause and Free Exercise violations, as well as other
First Amendment rights.

ASSOCIATE DIRECTOR
ACLU Foundation of Southern California
American Civil Liberties Union of Southern California

1979 TO 1985

Under the direction of the Executive Director, responsible for administration of two non-profit organizations,
including working with Boards of Directors on development of policy on civil liberties issues. Engaged in litigation
and assisted Legal Director in coordination and supervision of pro bono attorneys.

DEVELOPMENT DIRECTOR
ACLU Foundation of Southern California
American Civil Liberties Union of Southern California

1977 TO 1979

Responsible for conducting a variety of fundraising efforts to meet a million-dollar plus annual budget for a
501(c)(3) and a 501(c)(4).

Admitted to Practice:

California Supreme Court

November, 1978

United States Supreme Court

September, 1991

Ninth Circuit Court of Appeals

August, 1986

U.S.D.C. Central District of California

February, 1986

U.S.D.C. Eastern District of California

June, 1990

Litigation Experience:

Federal courts: (Partial listing of published opinions and significant cases)

CPR for SKID ROW,
779 F.3d 1098 (9th Cir. 2015)

Partial reversal of summary judgment in favor of the Defendant and holding that California Penal Code §403
could not lawfully be applied to criminalize the expressive activity of the Plaintiffs for protesting on Skid
Row.

(Lead counsel and argued on appeal)

Desertrain v. City of Los Angeles

754 F.3d 1114 (9th Cir. 2014)

Reversal of summary judgment in favor of the Defendants and holding that Los Angeles Municipal Code §85.02, prohibiting parking a vehicle on public streets or parking lots any time of day or night if a person “lives” in the vehicle, is unconstitutionally vague.

(Lead counsel and argued on appeal)

Lavan v. City of Los Angeles

693 F.3d 1022 (9th Cir. 2012), *affirming* grant of preliminary injunction 797 F.Supp.2d 1005 (C.D. Cal. 2011)

Preliminary injunction barring City from confiscating and immediately destroying the property of homeless individuals on Los Angeles’ Skid Row.

(Lead Counsel)

Long Beach Area Peace Network v. City of Long Beach

522 F.3d 1010 (9th Cir. 2008), as amended July 24, 2009

Upholding and reversing in part on appeal a decision of the district court granting Plaintiffs’ request for a preliminary injunction to enjoin a municipal parade ordinance that included vague permit standards setting, *inter alia*, advance-notice requirements police charges based on the past unlawful conduct of third parties without adequate standards to limit the discretion of public officials charged with implementing the parade ordinance.

(Lead counsel)

Fitzgerald v. City of Los Angeles

485 F.Supp.2d 1137 (CD CA 2008)

Extending injunction against police sweeps of homeless persons on Los Angeles’ Skid Row on the grounds of searching for parole and probation violations. See below for discussion of permanent injunction in 2003.

(Co-Counsel)

Multi-Ethnic Immigrant Worker Organizing Network (MIWON) v. City of Los Angeles

246 F.R.D. 621 (C.D. Cal. 2007)

Order granting class certification in challenge to police assault on a lawful assembly of immigrant rights supporters by the Los Angeles Police Department on May Day, 2007.

(Class Co-Counsel)

Edward Jones, et al., v. City of Los Angeles,

444 F.3d 1118 (9th Cir. 2006), vacated pursuant to settlement 505 F.3d 1006 (2007)

Challenge to City of Los Angeles Municipal Code §41.18(d), prohibiting sitting, lying or sleeping on any street or sidewalk anywhere in the City at any time of day or night. Plaintiffs, all of whom are homeless persons, brought an 8th Amendment as-applied challenge to their arrests and citations for violating the ordinance when there was no available adequate shelter.

(Co-counsel)

Terry Tipton-Whittingham, et al. v. City of Los Angeles

316 F.3d 1059 (9th Cir. 2003)

Challenge by City of Los Angeles to interim fee award granting plaintiffs’ fees as “catalysts” under state civil rights fee shifting statutes. Following oral argument, the Ninth Circuit certified issue of continued availability of “catalyst” fees under California law after adverse decision by the United States Supreme Court rejecting catalyst fee doctrine under federal law absent express legislative authorization. Certified for hearing before the California Supreme Court and ultimately upheld the catalyst fee doctrine under California law.

(Co-counsel; argued in Ninth Circuit)

Fitzgerald v. City of Los Angeles

2003 U.S. Dist. LEXIS 27382 (CD CA 2003)

Permanent injunction enjoining Fourth Amendment violations by the Los Angeles Police Department (LAPD). The injunction prevents the LAPD from engaging in stops of homeless persons for parole and probation sweeps on Skid Row without reasonable suspicion to believe that specific individuals are on parole or probation and subject to a search condition, or that the individual has engaged in, or is about to commit a crime.

(Lead counsel)

Khademi v. South Orange County Community College District

194 F.Supp.2d 1011 (C.D. CA 2002)

First Amendment facial challenge invalidating college policy regulating time, place and manner of student speech on campus.

(Lead counsel)

Mardi Gras of San Luis Obispo v. City of San Luis Obispo

189 F. Supp.2d 1018 (C.D. Cal. 2002)

Preliminary injunction to enjoin a municipal parade ordinance that required lengthy advance-notice requirement and permitted high insurance and police charges based on the past unlawful conduct of third parties without adequate standards to limit the discretion of public officials charged with implementing the parade ordinance.

Bauer v. Sampson

261 F.3d 775 (9th Cir. 2001)

First Amendment challenge to disciplinary action against college professor for publication of an alternative newsletter criticizing elected and appointed public officials and disclosing wrongdoing by college officials and personnel. The college sought to discipline the professor for violating the district's policies on discrimination and work-place violence. The policies were declared unconstitutional as applied to the professor's speech.

H.C. v. Koppel

203 F.3d 610 (9th Cir. 2000)

Dismissal of federal civil rights action filed in federal court against state court judge and appointed counsel for minor in family law matter. Circuit held that Younger Abstention applied and non-custodial parent had adequate state court remedy.

Justin v. City of Los Angeles

2000 U.S. Dist. LEXIS (CD Cal. 2000)

Class action to enjoin police sweeps of homeless population on Los Angeles' Skid Row. Permanent injunction stipulated to in settlement following certification of the injunctive relief class.

(Lead counsel)

Los Angeles Alliance for Survival, et al. v. City of Los Angeles

987 F. Supp. 819 (1997); 157 F.3d 1162 (9th Cir. 1998); on certification to the California Supreme Court, 22 Cal.4th 352 (2000); 224 F.3d 1076 (9th Cir. 2000)

Injunction issued in challenge to municipal ordinance barring so-called "aggressive solicitation" in broad areas of traditional public fora. Preliminary injunction entered by district court based on California Constitution. On appeal, the Ninth Circuit certified the California Constitution question to the California Supreme Court. Following decision by the California Supreme Court, the Ninth Circuit upheld the original injunction.

(Co-counsel)

Service Employees International Union 660 v. City of Los Angeles

114 F. Supp.2d 966 (C.D. Cal. 2000)

Challenge to the "no-protest zone" at the Democratic National Convention in Los Angeles in 2000, as well as a preliminary injunction to enjoin the City of Los Angeles parade ordinance.

(Co-counsel)

United States v. Wunsch

54 F.3d 579 (9th Cir. 1995); 84 F.3d 1110 (9th Cir. 1996) (reargument)

First Amendment challenge to discipline of male attorney for "gender bias" in sending note to female Asst. U.S. Attorney after she successfully moved to disqualify him as defense counsel in a criminal case. Ninth Circuit invalidated the penalty and declared unconstitutional California's "offensive personality" regulation on attorneys' professional conduct. (Argued and briefed on appeal).

American Jewish Congress v. City of Beverly Hills

65 F.3d 1539 (9th Cir. 1995); 90 F.3d 379 (9th Cir. 1996) (en banc)

First Amendment challenge to display of a religious symbol on public property and to permit scheme for expressive activities in public fora in the City of Beverly Hills. The en banc panel held the permit scheme unconstitutional and found that a preference had occurred for the display of a particular religious symbol. The en banc decision was unanimous. (Argued and briefed on appeal)

Baca v. Moreno Valley Unified School District

936 F. Supp. 719 (C.D. Cal. 1996)

First Amendment challenge to school board regulations preventing speakers from making disparaging remarks about public employees during public board meetings.

Wallin v. City of Los Angeles,

1194 U.S. App. LEXIS 2343 (9th Cir. 2004)

Circuit dismissed appeal of defendant City and law enforcement officers from denial of qualified immunity. Appellee, a female officer with the Los Angeles Police Department, alleged that appellants violated her right to equal protection, due process and right to petition the government because they violated LAPD confidentiality regulations and delayed the investigation into her allegations of co-worker rape.

(Lead counsel)

National Abortion Federation v. Operation Rescue

8 F.3d 680 (9th Cir. 1993)

Class-action state-wide injunction against blockades of women's health care clinics by anti-abortion activists. First case decided under the "frustrate and hinder" clause of 42 U.S.C. § 1985(3), the 1871 Ku Klux Klan Act. Appeals court held cause of action under "frustrate and hinder" clause was properly plead and reversed 12(b)(6) ruling on that claim.

(Co-lead counsel throughout; argued on appeal)

Hewitt v. Joyner

940 F.2d 1561 (9th Cir. 1991)

Establishment Clause challenge to Christian theme park, Desert Christ Park, owned and operated by San Bernardino County. Ninth Circuit held County ownership and operation of the park violated the Establishment Clause.

(Lead counsel throughout litigation; argued on appeal).

Standing Deer v. Carlson

831 F.2d 1525 (9th Cir. 1986)

First Amendment challenge for Native Americans at Lompoc Federal Penitentiary to regulation barring religious headbands in the dining facilities for purported health reasons.

(Argued and briefed on appeal)

Burbridge v. Sampson

74 F.Supp.2d 940 (C.D. Ca. 1999)

First Amendment challenge to community college policy regulating student speech in public fora on campus. Court issued a preliminary injunction, declaring the college's speech regulations unconstitutional.

Rubin v. City of Santa Monica

823 F.Supp. 709 (C.D. Ca. 1993)

First Amendment challenge to city permit scheme limiting access to public parks for protected expressive activities. Court issued a preliminary injunction and declared the permit scheme unconstitutionally on vagueness grounds and procedural due process grounds. (Lead counsel)

State Court

Terry Tipton-Whittingham, et al. v. City of Los Angeles

34 Cal.4th 604 (2002)

California continues to recognize "catalyst" fee awards to prevailing parties under the private attorney-general statute (Cal. Code of Civ. Proc. §1021.5) and Fair Employment and Housing Act (FEHA) despite change in federal civil rights fee-shifting law. Under California law, there is no requirement of a judicial determination establishing a change in the legal obligations of the parties.

(Co-counsel and argued at California Supreme Court)

Los Angeles Alliance for Survival v. City of Los Angeles

22 Cal.4th 352 (2000)

Ordinance restricting certain activity as "aggressive solicitation" was not content-based under California Constitution

(co-counsel)

Williams v. Garcetti

5 Cal.4th 561 (1993), *sub nom Williams v. Reiner*, 13 Cal.App.4th 392 (1991)

Challenge on due process grounds to portion of STEPP law which imposed a criminal penalty on parents of minor children engaged in or at risk of delinquent conduct.

(Argued and brief on appeal to California Supreme Court)

Sands v. Morongo Unified School District

53 Cal.3d 863, *cert denied*, 112 U.S. 3026 (1991)

225 Cal.App.3d 1385 (1989)

Establishment Clause challenge invalidating prayers at public high-school graduations.

(Argued and briefed as lead counsel throughout litigation)

Walker v. Superior Court of Sacramento

47 Cal.3d 112 (1988)

Establishment Clause/Free Exercise/Due Process challenge to criminal prosecution of Christian Science parents for death resulting from use of prayer instead of traditional medicine in treatment of ill child. (Wrote amicus brief on due process issues).

Irvine Valley College Academic Senate, et al. v. South Orange County Community College District

129 Cal.App.4th 1482 (2005)

Statutory construction of plain language of Education Code §87360, bolstered by legislative intent, requires actual joint agreement and mutual development of revisions to faculty hiring policies.

(co-counsel, drafted final briefs on appeal)

Fashion 21, et al. v. Coalition for Humane Immigrant Rights (CHIRLA), et al.

111 Cal.App.4th 1128 (2004)

Special motion to strike defamation complaint by retainer against garment worker advocates must be granted as the plaintiff retailer could not establish a probability of prevailing on the merits of their claims. Garment worker advocates properly relied on draft labor commission regulations suggesting retailer could be liable for sweatshop conditions of manufacturing of its retail goods.

(lead counsel at all stages)

Gonzalez v. Superior Court

33 Cal.App.4th 1539 (1995)

Challenge to discovery order in sexual harassment case requiring plaintiff to disclose name of confidential informant who provided her with photographic evidence of harassment. "After-acquired evidence" rule applied to require disclosure.

(Lead counsel in trial court and appeal)

Lantz v. Superior Court of Kern County

28 Cal.App.4th 1839 (1994)

Privacy rights challenge to interpretation of Consumer Personnel Records Statute (CCP § 1985(3), requiring strict adherence to statutory procedures and limiting exemption of local government agencies from adhering to statutory requirements.

(Lead counsel throughout litigation)

Rudnick v. McMillan

25 Cal.App.4th 1183 (1994)

Defamation verdict involving public figure plaintiff and local environmentalist author of letter to editor overturned on basis that letter was protected opinion and public figure subject to constitutional malice proof burden. Wrote amicus brief which formed basis of appellate ruling.

Westside Sane/Freeze v. Hahn

224 Cal.App.3d 546 (1990)

Challenge to restrictions on First Amendment petition activities in shopping center.

(Co-counsel, co-wrote appeal)

City of Glendale v. Robert George

208 Cal.App.3d 1394 (1989)

Reversal of trial court order imposing prior restraints on speech of "Presidential Santa" on the basis that he constituted a public nuisance to his neighbors in a residential area.

(Argued and briefed on appeal)

McCarthy v. Fletcher

207 Cal.App.3d 130 (1989)

Challenge to removal of textbooks from school reading list based on community-based religious objections. Court of Appeal reversed summary judgment decision, holding that there was sufficient evidence of constitutionally impermissible factors in evaluation of appropriateness of class-room reading materials.

(Argued and brief on appeal)

Fiske v. Gillespie

200 Cal.App.3d 130 (1988)

Challenge to sex-based actuarial presumptions in insurance industry rate for particular types of life insurance and annuity benefits.

(Co-Counsel, Argued on appeal)

Publications:

(Partial listing)s

Catalyst Fees After Buckhannon

Civil Rights Litigation and Attorney Fees Annual Handbook

(January 2006)

Free Speech and Harassment: An Overview

in the Public Employee Sector

CPER: CALIFORNIA PUBLIC EMPLOYEE RELATIONS

Institute of Industrial Relations - UC Berkeley

June 1999 No. 136

Defeating Employer Defenses to Supervisor Liability

After Ellerth and Faragher

ADVOCATE, October 1998

Student Expression Under California Law

UCLA Journal of Education

Volume 3, pp. 127-137 (1989)

Should Attorneys Be Disciplined For Gender Bias

Point/Counterpoint ABA Journal August, 1995

Fight Illegal Police Practices in State Court

Los Angeles Daily Journal

March 6, 1992

Judicial Oversight Limited by Supreme Court

Los Angeles Daily Journal

May 6, 1991

Jury Nullification is Conscience of Community

Los Angeles Daily Journal

August 31, 1990

A Basic Right Merits Shield From The Mob

Los Angeles Times

August 11, 1991 p.M5

*Prop 115 revisited: Police charged with crimes
deserve fair trials too*
Los Angeles Daily News
May 7, 1991

Prayer Doesn't Belong at Graduation
USA Today
May 15, 1991 p. A10

Killea Tactic Can Only Hurt the Church in the Long Run
Los Angeles Times (San Diego)
November 20, 1989 p.B7

The Fifth is a Shield for All
Los Angeles Times
August 6, 1988 II8
(authored for Exec. Dir. ACLU)

Which Way Will Rehnquist Court Turn?
Los Angeles Daily News
June 18, 1986 p.21

Constitution Exacts Cost for Religious Freedom
Los Angeles Daily News
June 8, 1986 FOCUS p.3

Education:

Peoples College of Law	J.D. May, 1978
Douglass College.For Women, Rutgers University	B.A. June, 1968

Professional and
Community Activities:

Adjunct Professor - Loyola Law School Civil Rights Advocacy Practicum	2007-present
Blue Ribbon Panel on LAPD Rampart Inquiry, Member	2004-2006
Ninth Circuit Gender Bias Task Force Convenor, Advisory Committee on Employment Law	1992-1993
Ninth Circuit Conference on "Ethnicity, Race, and Religion in the Ninth Circuit" Member, Working Subcommittee	1993
Los Angeles Public Interest Law Journal Advisory Board	2007-present

Los Angeles Center for Law and Community Action Member, Board of Directors	2015-present
National Police Accountability Project Member, Advisory Board and Board of Directors	2006-present
National Lawyers Guild, Los Angeles - President	2001-2008
National Lawyers Guild - National Executive Vice President	2009-2011
National Lawyers Guild Far West Regional Vice-President	2003-2005
National Lawyers Guild, National Executive Committee	2003-2012
NLG National Mass Defense Committee, Co-chair	2003-2012
Women Lawyers Association of Los Angeles Member, ProChoice Committee	1985-2002
The California Anti-SLAPP Project Member, Board of Directors	1995-2010

Awards:
(Partial listing)

PEN Freedom to Write Award	1991
American Jewish Congress Tzedek Award	1992
Planned Parenthood Los Angeles, Distinguished Service Award	1990
Freethought Heroine Award	1992
National Lawyers Guild - Los Angeles	1999
ACLU of Southern California Pro Bono Attorney Award	2001
Asian Pacific American Legal Center Pro Bono Award	2003
California Lawyer: Super Lawyer -Civil Rights/Constitutional Law	2004-2014
ACLU of Southern California Freedom of Expression Award	2007
Daily Journal Top 100 Most Influential Lawyers in California	2007

National Lawyers Guild - Ernie Goodman Award	2007
Angel Award - California Lawyer Magazine Award for pro bono work	2007
CLAY Award (California Lawyer of the Year - civil rights) - California Lawyer Magazine	2008
Top 75 Women Litigators in California - Daily Journal	2008, 2013
California Super Lawyers - Top 50 Women Lawyers in Southern California	2014
National Lawyers Guild, Los Angeles Law for the People Award	2014
ACLU Lifetime Achievement Award	2017

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

RAY WEBB,	)	No. CV 13-9112-PLA
	)	
Plaintiffs,	)	ORDER RE MOTION FOR ATTORNEYS'
	)	FEES AND COSTS
v.	)	
	)	
OFFICER J. ACKERMAN, <u>et al.</u> ,	)	
	)	
Defendants.	)	

On May 2, 2017, following a jury trial, a verdict in this civil rights action was returned in favor of plaintiff and against the four named individual defendants. The jury concluded that each of the defendants had violated plaintiff's Fourth Amendment rights by using excessive force against him, and that punitive damages against the defendants were justified. The jury awarded a total of \$620,000 to plaintiff (\$500,000 for past general damages, \$100,000 for future general damages, and \$20,000 in punitive damages). Plaintiff has now filed a Motion for Attorneys' Fees and Costs (the "Motion"), in which he seeks attorneys' fees pursuant to Fed.R.Civ.P. 54(d) and 42 U.S.C. § 1988 in the sum of \$448,760, as well as paralegal fees of \$11,300, costs of \$4,092.15, and additional fees of \$3,185 for work performed in connection with the Motion. Defendants filed an Opposition to the Motion, and plaintiff then filed a Reply. The Court has reviewed the documents submitted by the parties in connection with the Motion, and has considered the statements and arguments presented by counsel at the hearing on January 3, 2018.

1 There is no dispute that plaintiff is considered the prevailing party in this action under §
 2 1988. Hensley v. Eckerhart, 461 U.S. 424, 433 (1983); see Opposition at 4 (“Plaintiffs’ [sic] claim
 3 of attorneys’ fees is authorized by Section 1988. This section permits this Court to ‘allow the
 4 prevailing party . . . a reasonable attorney’s fee as part of the costs.’ . . . Defendants oppose the
 5 fee motion *not because it disputes that counsel is entitled to fair compensation for their efforts*, but
 6 because the demand is unreasonable, and beyond what is fair”) (emphasis added). “The purpose
 7 of § 1988 is to ensure ‘effective access to the judicial process’ for persons with civil rights
 8 grievances. Accordingly, a prevailing plaintiff ‘should ordinarily recover an attorney’s fee unless
 9 special circumstances would render such an award unjust.’” Hensley, 461 U.S. at 429 (citations
 10 omitted). The applicant bears the burden of showing an entitlement to an award and of
 11 documenting the hours expended and hourly rates (id. at 437); the opposing party then “has a
 12 burden of rebuttal that requires submission of evidence to the district court challenging the
 13 accuracy and reasonableness of the hours charged or the facts asserted by the prevailing party
 14 in its submitted affidavits.” Gates v. Gomez, 60 F.3d 525, 534-35 (9th Cir. 1995). The question
 15 presented in the Motion is whether the requested amounts are reasonable under the statute.
 16 Plaintiff contends that he is entitled to the requested fees, based on the nature of the case, the
 17 experience of counsel, the work involved, and the outcome of the trial. Defendants disagree,
 18 generally arguing that counsel’s billing statements are too vague, and reflect overhead activities,
 19 inefficient work and duplication of effort, but mainly contending that the hourly rates sought are
 20 excessive.

21 The Court examines the “lodestar” in determining whether the requested fees are
 22 reasonable. The lodestar is obtained, first, by multiplying the number of hours reasonably
 23 expended on the litigation by a reasonable hourly rate. Hensley, 461 U.S. at 433-34. Those hours
 24 that were not reasonably expended (such as when a case is overstaffed, or based on varying skills
 25 of the lawyers involved, or that are excessive or redundant) should be excluded. Id. A reasonable
 26 hourly rate under § 1988 is determined “according to the prevailing market rates in the relevant
 27 community, regardless of whether plaintiff is represented by private or nonprofit counsel.” Blum
 28 v. Stenson, 465 U.S. 886, 895 (1984).

1 The factors that may be considered in reaching a lodestar value and possible adjustment
2 are: (1) the time and labor required; (2) the novelty and difficulty of the questions involved; (3) the
3 skill requisite to perform the legal service properly; (4) the preclusion of other employment by the
4 attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or
5 contingent; (7) time limitations imposed by the client or the circumstances; (8) the amount involved
6 and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the
7 undesirability of the case; (11) the nature and length of the professional relationship with the client;
8 and (12) awards in similar cases. Hensley, 461 U.S. at 430 n.3.

9 Here, plaintiff seeks an award of fees of \$448,760 based on the work of attorney Tiomkin.
10 He asserts that as of the filing of the Motion, Mr. Tiomkin had spent 690.4 hours working on this
11 case, and that a reasonable hourly rate is \$650. In support of these numbers, plaintiff has
12 submitted a declaration from counsel setting forth his legal experience, as well as his time records
13 from this case. In sum, Mr. Tiomkin spent a couple of years as a county public defender; since
14 2008, he has managed his own firm and has specialized in criminal defense, personal injury and
15 wrongful death cases; has tried over 50 cases to verdict; has litigated cases involving police
16 misconduct and violations of constitutional rights; and has represented many victims of misconduct
17 by law enforcement. While the precise nature of Mr. Tiomkin's experience in handling section
18 1983 cases and taking such actions to trial is not at all clear from his declaration, he asserts that
19 prosecuting such cases "was a natural transition for him" in light of his background (Motion, at 6).
20 At the hearing, he represented that he had handled just one civil rights action prior to the instant
21 matter, and that action settled before trial. Mr. Tiomkin also submitted declarations from attorneys
22 not associated with this case setting forth their opinions as to the prevailing hourly rates for
23 attorneys with similar experience and skills as Mr. Tiomkin, and the reasonableness of the hourly
24 amounts sought by Mr. Tiomkin. A declaration also represents that the rate of \$200 per hour
25 being sought for the paralegal's time in this action is reasonable, based on the paralegal's level
26 of experience.¹

27
28 ¹ The paralegal spent 56.5 hours in connection with this litigation which, at a rate of \$200
per hour, amounts to \$11,300. Counsel spent 4.9 hours preparing plaintiff's Reply to the

1 In opposition, defendants argue that the requested fees are not reasonable, based on
2 counsel's level of experience and the prevailing fees in the Central District, and as this matter was
3 "relatively straight-forward." Defendants submit that the amount sought would result in an
4 unjustified windfall, and a real person in the real world would not pay an attorney the sought-after
5 hourly amount for the type of work here. Defendants also contend that the billing statements are
6 too vague to support the claimed hours. In particular, defendants note that Mr. Tiomkin has not
7 indicated his hourly rate for private clients in criminal cases, or any other sort of compensation he
8 receives for other attorney work. They argue that what is reasonable must be examined in light
9 of what "a reasonable purchaser of the services would actually pay in a competitive market place,"
10 and must reflect the reality that a prevailing attorney has a financial incentive to charge as much
11 as he possibly can. Indeed, according to defendants, those who provided declarations in support
12 of the Motion attesting to the reasonableness of the rates being sought would themselves benefit
13 in their own cases from a high fee award in this case. Further, the Long Beach City Attorney's
14 Office, when it hires outside counsel in civil rights cases, pays less than \$300 per hour including
15 for cases that proceed to trial. Counsel thus suggests that a reasonable rate for Mr. Tiomkin,
16 based on his experience, would be \$425 per hour at most. Counsel further suggests that the
17 number of hours expended was not reasonable, and that duplicative, unreasonable, unnecessary
18 or unjustified hours should be reduced. Defendants in their pleadings do not question any specific
19 entry of time spent on any task, or any task itself, but instead insist that counsel is seeking
20 compensation "for hours not reasonably expended in the prosecution of this action; just as a
21 private client should not have to pay for overhead activities, inefficient work resulting in excessive
22 billing, duplication of effort, and the like, neither should the defendants." At the hearing, counsel
23 provided examples from Mr. Tiomkin's time sheets of research Mr. Tiomkin engaged in that,
24 according to defense counsel, an experienced civil rights litigator would not have needed to
25 perform.

26
27
28 Opposition to the Motion and attending the hearing, which amounts to \$3,185 at a rate of \$650 per hour.

1 The Court must determine a reasonable hourly rate after “considering the experience, skill
2 and reputation of the attorney requesting fees,” guided by the rate “prevailing in the community
3 for similar work performed by attorneys of comparable skill, experience, and reputation.” Trevino
4 v. Gates, 99 F.3d 911, 924 (9th Cir. 1996) (citation omitted). After considering the pleadings of
5 the parties and declarations filed in support of their positions, and the statements and arguments
6 of counsel, the Court accepts Mr. Tiomkin’s requested rate as falling within the prevailing market
7 rate. Here, plaintiff has submitted evidence that the rate sought by Mr. Tiomkin is appropriate for
8 attorneys of comparable skill, experience, and reputation. Mr. Beck, who has substantial
9 experience in civil rights litigation going back almost 40 years, confirms that Mr. Tiomkin has
10 “substantial trial experience in his 11 years in practice”; and, based on his own detailed experience
11 in fee awards and “awareness of fee awards in the Central District,” he believes that the market
12 rate in Los Angeles for attorneys in private practice such as Mr. Tiomkin warrants \$700 per hour.
13 Ms. Sobel, who has practiced law for close to 40 years, including 20 years primarily practicing in
14 the area of complex civil rights litigation, and who has made it a practice of surveying firms to
15 obtain relevant billing rates for comparison purposes, states her understanding that Mr. Tiomkin
16 has limited experience in civil litigation, but has extensive trial experience as a criminal defense
17 lawyer. She believes that \$650 per hour is within the range of reasonable rates in the Los Angeles
18 legal market for an attorney of his skill and experience. She also opines that \$200 per hour for
19 paralegal work is reasonable based on the paralegal’s level of experience and the range of rates
20 approved for paralegals of comparable skills and experience. When Mr. Tiomkin’s declaration is
21 added to the declarations of outside attorneys attesting to the propriety of the requested rates, the
22 Court will not deviate from that rate as to Mr. Tiomkin. Neither does the Court find convincing
23 defendants’ argument that the rate should be considered in light of the hourly rate charged by law
24 firms retained by the City of Long Beach to defend such cases. Those firms are guaranteed
25 payment regardless of the outcome of the case, and may be incentivized to charge a lower rate
26 to ensure repeat business. See, e.g., Trevino, 99 F.3d at 925 (“[p]rivate attorneys hired by a
27 government entity to defend excessive force cases are not in the same legal market as private
28 plaintiff’s attorneys who litigate civil right cases.”).

1 Having reviewed all of the time entries of counsel, who is a sole practitioner and thus
2 performed all of the attorney work on this case, the Court rejects defendants' assertions that Mr.
3 Tiomkin's judgment as to the time he needed to prepare for what turned out to be a very
4 successful trial for plaintiff should be questioned. The Court has not been presented with any
5 sound rationale to question his under oath declarations. Defense counsel has not convinced the
6 Court that the hours spent by counsel on the various tasks are much beyond what a reasonable
7 attorney would claim. Further, many hours are claimed based on time spent by counsel reviewing
8 depositions, statements and reports, and meeting with experts and preparing for expert testimony.
9 The Court observed at trial that much of plaintiff's case was based on a careful review and
10 understanding of prior statements made by defendants, both immediately following the incident
11 and at deposition. This review necessarily required many hours to compare, contrast, index and
12 reference those statements. The Court also observed the importance of expert testimony at trial,
13 and the need for a thorough comprehension and understandable presentation of expert opinions.
14 The requested hours are not excessive. The Court also notes that in a contingency fee
15 arrangement, "lawyers are not likely to spend unnecessary time . . . in the hope of inflating their
16 fees. The payoff is too uncertain, as to both the result and the amount of the fee. It would
17 therefore be the highly atypical civil rights case where plaintiff's lawyer engages in churning."
18 Moreno v. City of Sacramento, 534 F.3d 1106, 1112 (9th Cir. 2008).

19 Nevertheless, the Court observes that at the time he started working on this case, Mr.
20 Tiomkin had almost no experience in the area of civil rights litigation, having handled only one
21 other such case prior to his efforts here. His work on this case, including researching and
22 preparing motions and preparing for trial, was with the eye and level of familiarity of an attorney
23 who was new to this field. Indeed, he had not **tried** any federal civil rights cases prior to this one.
24 While Mr. Tiomkin's general trial experience may balance out his inexperience in civil rights
25 matters to some degree, that trial experience was not particular to the issues specific to this area
26 of law. Common sense dictates that an attorney with next to no experience in civil rights litigation,
27 and with no civil rights trial experience, would spend more time preparing a case than would an
28 attorney with years of civil rights experience when faced with the same case. Based on these

1 specific reasons and in the exercise of the Court's discretion, the Court finds it appropriate to cut
 2 the requested number of hours by 15%, to 586.84 hours. Moreno, 534 F.3d at 1112 ("the district
 3 court can impose a small reduction, no greater than 10 percent -- a 'haircut' -- based on its
 4 exercise of discretion *and without a more specific explanation.*") (emphasis added). The same
 5 rationale does not apply to the amount of time sought for paralegal assistance, however. Counsel
 6 at the hearing represented that Ms. Campros has experience in the area of civil rights litigation.
 7 The Court finds no reason to reduce her time or hourly rate.

8 The fees and expenses being sought by plaintiff consist of the filing fee, deposition costs,
 9 mediation costs, and witness fees (\$40 per day plus mileage). Defendants do not seriously
 10 contest the amount of fees and costs being sought here.

11 In sum, taking into account the 15% adjustment in the number of hours spent by Mr.
 12 Tiomkin in this action, the Court awards attorneys' fees based on the Motion as follows: 690.4
 13 hours, plus 4.9 hours for litigation of the Motion (for a total of 695.3 hours), less a 15% reduction
 14 (for a total of 591.005 hours), all at \$650 per hour, **for an award on the Motion of \$384,153.25.**
 15 The Court concludes that the **total award on the Motion** is appropriate and does not amount to
 16 a windfall to the attorney involved. The Court further awards \$11,300 for paralegal fees (56.5
 17 hours at \$200 per hour). The Court further awards fees and expenses in the amount of \$4,092.15.

18 **IT IS SO ORDERED.**

19 

20 DATED: January 4, 2018

21

PAUL L. ABRAMS
 22 UNITED STATES MAGISTRATE JUDGE
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 28

1 DISABILITY RIGHTS LEGAL CENTER

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21 *Attorneys for PLAINTIFF MICHAEL GARCIA and the Plaintiff Class*

22 UNITED STATES DISTRICT COURT
23 FOR THE CENTRAL DISTRICT OF CALIFORNIA

24 MICHAEL GARCIA on behalf of
25 himself and others similarly situated,

26 Plaintiff,

27 vs.

28 LOS ANGELES COUNTY SHERIFF'S
DEPARTMENT, a public entity, et al.,

Defendants.

Case No. : CV 09-08943 DMG (SHx)

DECLARATION OF ANNA RIVERA
IN SUPPORT OF PLAINTIFF'S
NOTICE OF MOTION AND MOTION
FOR AWARD OF ATTORNEYS'
FEES AND EXPENSES RELATED
TO CLASS ACTION SETTLEMENT
WITH COUNTY OF LOS ANGELES

DECLARATION OF ANNA RIVERA

I, ANNA RIVERA, declare:

1. I am a Senior Staff Attorney at the Disability Rights Legal Center (“DRLC”). The DRLC, along with co-counsel at Milbank Tweed, Hadley & McCloy (“Milbank”), represents Plaintiff Michael Garcia and has been appointed by the Court as Class Counsel. The facts set forth herein are based upon my personal knowledge, my review of documents prepared and/or maintained by DRLC in the ordinary course of business, and information provided to me by employees of DRLC’s co-counsel, Milbank. If called as a witness, I could and would testify competently thereto.

2. DRLC is a 501(c)(3) non-profit public interest organization dedicated to advancing the civil rights of people with disabilities through education, advocacy and litigation. Founded in 1975, DRLC is one of the oldest non-profit, public interest law centers to focus on representing individuals with diverse disabilities. DRLC’s mission is to champion the rights of people with disabilities through education, advocacy and litigation. DRLC accomplishes its work through several programs, including the Civil Rights Litigation Program, Education Advocacy Program, Cancer Legal Resource Center, the Inland Empire Program, and the Community Advocacy Program. DRLC, engages in, *inter alia*, class action, multi-plaintiff and other complex impact litigation on behalf of individuals with disabilities who face discrimination or other violations of civil rights or federal statutory protections. DRLC is generally acknowledged to be a leading public interest organization. Attorneys in the firm have lectured at local, state, and national legal and professional organizations on the law applicable to individuals with disabilities.

3. DRLC has litigated complex civil rights and public interest cases for over 40 years with a focus on impact complex litigation affecting the disability community. Examples include: *Willits, et. al. v. City of Los Angeles*, Case No. CV 10-05782 CBM (RZx) (a successfully settled class action challenging the City of Los Angeles' failure to maintain pedestrian right of ways, including sidewalks and curb ramps for people with mobility disabilities); *Ms. Wheelchair California v. Starline Tours*, No. CV11-02620JFW (CWx) (C.D. Cal.) (a successfully settled class action resulting in company-wide change in policy governing accessible tours and seating); *Peter Johnson et al. v. Los Angeles County Sheriff's Department et al.*, USDC Case No. CV 08-03515 DDP (SHx) (a successfully settled class action currently in the monitoring stage on behalf of individuals with mobility impairments to obtain program and physical access while detained in the Los Angeles County Jail); *Casey A., et al. v. Robles, et al.*, Case No. CV10-00192-(GHK) (FMx) (C.D. Cal.) (a successfully settled class action addressing Los Angeles County's failure to provide youth in the County's largest probation camp with basic and appropriate education and rehabilitative services); *Doe2 v. County of San Bernardino, et al.*, (CV ED 02-962 SGL) (a successfully settled class action addressing the County's failure to provide special education and mental health services to children with disabilities in their custody in juvenile detention); *Valenzuela v. County of Los Angeles*, Case No. CV 02-9092 (JWJx) (C.D. Cal.) (a successfully settled class action addressing failure to provide effective communication for people who are deaf and hard of hearing in field and jail settings by Los Angeles County Sheriff's Department); and *Lauderdale v. Long Beach Police Department*, Case No. CV 08-979 ABC (JWJx) (a successfully settled class action addressing police department's failure to provide effective communication for people who are deaf or hard of hearing.).

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1 4. As a non-profit law firm and a provider of legal services pursuant to
 2 grants and other funding, DRLC does not charge fees to its clients for any work
 3 undertaken on their behalf. DRLC primarily handles cases in which the client
 4 cannot afford to retain a law firm, where other lawyers will not handle the matter,
 5 and/or where the injunctive relief is the primary outcome of the litigation. Our
 6 legal services are provided free of charge to our clients, with attorneys' fees
 7 generally paid pursuant to fee shifting statutes.

8 **Case History and Settlement with County Defendants**

9 5. Plaintiff obtained excellent results through the settlement reached with
 10 Defendants County of Los Angeles, Los Angeles County Sheriff's Department,
 11 Sheriff Baca in his official capacity (collectively, "County Defendants").

12 6. As representatives of class, Plaintiffs engaged in thorough discovery
 13 to ensure that the parties and the Court had adequate information to assess the
 14 barriers to accessing special education in the jail and relief sought for the class—as
 15 well as the reasonableness of the Settlement Agreement. The discovery included:
 16 substantial written discovery, including interrogatories, requests for admissions,
 17 and requests for production of documents, which resulted in the combined
 18 production of approximately hundreds of documents. Further, Plaintiffs actively
 19 pursued discovery in this matter. Due to disagreements that arose during the
 20 discovery process, the parties met and conferred on many occasions and Plaintiffs
 21 also filed a discovery motion. In addition to extensive written discovery, Plaintiffs
 22 deposed four County of Los Angeles officials and the County of Los Angeles'
 23 expert witness. The County of Los Angeles deposed the Named Plaintiff as well as
 24 Plaintiff's expert witness.

25 7. In addition, the parties filed cross-motions for summary judgment.

26 8. In the summer of 2009, the Parties began settlement negotiations. The
 27 Parties participated in extensive arms-length settlement negotiations, which
 28

1 included extensive written negotiations, multiple in-person meetings, telephonic
2 settlement negotiations, and multiple in-person settlement conferences with Judge
3 Terry J. Hatter Jr., who acted as a settlement officer in this case.

4 9. Concurrently with the Lawsuit, Los Angeles Unified School District
5 (“LAUSD”) commenced a civil action (“Related Case”) in the United States
6 District Court for the Central District of California, Case No. 2:09-cv-09289-VBF-
7 CT appealing the decision of the California Office of Administrative Hearings
8 (“OAH”) which found that, pursuant to California Education Code section 56041,
9 the LAUSD was the entity legally responsible for providing Plaintiff Michael
10 Garcia with a free appropriate public education while he was incarcerated in the
11 LACJ. The District Court in the Related Case subsequently entered orders
12 affirming the OAH decision. On or about June 3, 2010, LAUSD appealed that
13 order to the United States Court of Appeals for the Ninth Circuit.

14 10. Plaintiffs’ settlement negotiations with the County Defendants where
15 effectively stayed pending the outcome of LAUSD’s appeal in the Related Case in
16 the Ninth Circuit. On or about January 20, 2012, the Ninth Circuit certified the
17 question to California Supreme Court. On or about March 28, 2012, The
18 California Supreme Court agreed to take the matter. On or about December 17,
19 2013, the California Supreme Court issued a seminal decision, holding that the
20 assignment of responsibility for providing special education to eligible county jail
21 inmates between the ages of 18 and 22 years is governed by the terms of California
22 Education Code Section 56041. The Ninth Circuit then issued a final decision on
23 January 28, 2014, finding that the District Court’s ruling in the Related Case was
24 consistent with the California Supreme Court’s answer to the certified question, the
25 Ninth Circuit Court of Appeals affirmed the District Court’s decision affirming the
26 2009 decision of the administrative law judge.
27
28

1 11. Subsequent to this decision, the Parties renewed their settlement
2 negotiations. The Parties engaged in several in-person meetings, telephonic
3 negotiations, and exchanged multiple written drafts of the Settlement Agreement.
4 The Parties worked diligently to finalize the terms of the proposed Settlement
5 Agreement. On or about February 9, 2017 the Parties entered into a written
6 Settlement Agreement. Attached hereto as Exhibit A is a true and correct copy of
7 the Settlement Agreement.

8 12. Plaintiff obtained excellent results through the settlement reached with
9 Defendants County of Los Angeles, Los Angeles County Sheriff's Department,
10 Sheriff Baca in his official capacity (collectively, "County Defendants").

11 13. Plaintiff described the terms of that settlement in more detail in his
12 Motion for Preliminary Approval of Class Action Settlement Agreement. (See Dkt.
13 No. 424-1 and 424-3). As part of the settlement agreement, the County Defendants
14 have agreed to do the following: (a) administer a questionnaire to all newly booked
15 18-22 year old individuals who are processed through the LACJ Inmate Reception
16 Center aimed at identifying those inmates who would like to receive special
17 education services, (b) notify the charter school that currently provides services at
18 the LACJ of those individuals who affirmatively state they would like to receive
19 special education services, (c) create and distribute an informational pamphlet
20 regarding the availability of special education services and how to request them,
21 (d) modify its Inmate Grievance/Service Request Form to include a box titled
22 "Special Education/IEP," (e) designate an employee or employees who will
23 facilitate the provision of special education services, and (f) train relevant
24 Sheriff's Department staff regarding the provision of special education services to
25 eligible students.
26
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28

14. The qualifications of Class Counsel have been set forth in great detail in the earlier class certification briefing in this case and are discussed further below in paragraphs 19-57. (See Dkt. Nos. 81-84).

DRLC Rates

15. In setting our rates, DRLC reviews published cases and unpublished decisions concerning attorneys' fees rates used by comparable non-profit public interest organizations, awards that DRLC has received for attorneys' fees, and other information from private attorneys relating to the rates charged by private firms for comparable litigation. DRLC also carefully monitors its billing practices to ensure that courts are able to properly perform the lodestar analysis for a fee award. We also take into account the experience of the attorneys and staff working on the case and the complexity of the case.

16. Several courts have found DRLC's hourly rates reasonable. Examples of courts finding DRLC's hourly rates reasonable include:

- *Michael Garcia v. Los Angeles County Sheriff's Dept.*, Case No. CV 09-8943 MMM (SHx), the United States District Court for the Central District of California approved DRLC's 2011 historical rates in a class action. Attached as Exhibit B is a true and correct copy of that order.
- *California in Communities Actively Living Independent and Free, et al. v. City of Los Angeles et al.*, Case No. CV 09-0287 CBM (RZx) the United States District Court for the Central District of California found DRLC's 2012 historical rates reasonable. This included a range of \$450-\$550 for staff attorneys and \$230 for law clerks. And the court found a 2012 historical hourly rate of \$550 for a 2003 law graduate was reasonable. *Id.* at 6:11-14. The court further found that the plaintiffs had "provided sufficient evidence . . . supporting the reasonableness of their 2012 requested hourly rates" and "that requested hourly rates correspond to the prevailing market rates in the

relevant community, considering the experience, skill, and reputation of the attorneys in question.” *Id.* at 2:18-20. Attached hereto as Exhibit C is a true and correct copy of that order.

- *Peter Johnson v. Los Angeles County Sheriff’s Department*, Case No. CV 08-03515 DDP (SHx), the United States District Court for the Central District of California granted Plaintiffs’ Motion for Attorneys’ Fees and Costs in full. Attached as Exhibit D is a true and correct copy of that order. In particular, the motion that was granted sought time billed by DRLC attorneys at 2014 historical hourly rates of \$800 for a 1982 graduate, \$700 for a 1992 graduate, \$500 for a 2005 graduate and an hourly rate of \$230 for law clerks. See, Declaration of Richard Diaz in support of Plaintiffs’ Motion for Attorneys’ Fees, attached as Exhibit E (summary of hourly rates sought by Plaintiffs at para. 38 of Diaz Declaration) (exhibits to Declaration omitted due to length).
- *Willits et al v. City of Los Angeles et al*, Case No. CV 10-5782 CBM (RZx), the United States District Court for the Central District granted Plaintiffs’ Motion for Attorneys’ Fees and Costs and approved DRLC’s 2014 historical hourly rates. Attached as Exhibit F is a true and correct copy of that order. In particular, the motion that was granted sought time billed by DRLC attorneys at 2014 historical hourly rates of \$680 for a 1987 graduate, \$550 for a 2003 graduate, \$375 for a 2010 graduate, and an hourly rate of \$230 for law clerks. *Id.* at pg.6.
- *Greater Los Angeles Agency on Deafness, Inc. et al v. Krikorian Premiere Theaters, LLC*, Case No. CV 13-07172-PSG (ASx), the United States District Court for the Central District of California approved DRLC’s 2015 historical rates in a class action which had

1 systemic implications regarding access to movie theaters for
 2 individuals who are deaf or hard of hearing. Attached as Exhibit G is
 3 a true and correct copy of that order.

4 17. Experts in the field have also found DRLC's 2016 historical rates to
 5 be reasonable. For example, in a declaration in support of plaintiff's motion for
 6 reasonable attorney fees and costs, Mr. Barrett S. Litt opined as to the
 7 reasonableness of DRLC's rates in the matter of *Independent Living Center of*
 8 *Southern California et al v. City of Los Angeles, et al.*, Case No. CV 12-0551 FMO
 9 (PJW), a class action case currently pending in the United States District Court for
 10 the Central District of California. Attached as Exhibit H is a true and correct copy
 11 of that declaration (exhibits have been omitted due to length).

12 18. DRLC's current rates have also been found reasonable by Richard
 13 Pearl, an expert in the area of attorney fees charged in California and elsewhere. In
 14 a declaration in support of plaintiff's motion for reasonable attorney fees and costs,
 15 Mr. Pearl opined as to the reasonableness of DRLC's rates in the matter of *Ochoa*
 16 *et al v. City of Long Beach et al*, Case No. 2:14-cv-04307-DSF-FFM, a class action
 17 case currently pending in the United States District Court for the Central District of
 18 California. Attached as Exhibit I is a true and correct copy of that declaration.

19 19. DRLC's hourly rates for staff on this case are set forth in the chart
 20 below at paragraph 66. This chart lists the billing attorney, year of law school
 21 graduation, and pertinent hourly rate for all DRLC staff for whom fees are
 22 requested in this matter. Based on the information that I reviewed in working with
 23 the Director of Litigation to set our hourly rates, I believe our rates to be consistent
 24 with the current prevailing market rates charged by other attorneys with
 25 comparable skills, qualifications, experience, and reputation in the market covered
 26 by the Central District.

27 //

28 //

DRLC Attorneys and Their Roles

20. In addition to the hours expended by Milbank, Plaintiff is seeking compensation for eight DRLC attorneys who billed on this matter: (1) Paula Pearlman, former Executive Director; (2) Shawna L. Parks, former Legal Director of the DRLC; (3) Maronel Barajas, Director of Litigation; (4) Matthew Strugar, former Staff Attorney; (5) Umbreen Bhatti, former Staff Attorney; (6) Carly Munson, former Staff Attorney; (7) Andrea Oxman, former Staff Attorney; (8) Elliot Field, former Staff Attorney.

21. Paula Pearlman was the Executive Director at DRLC when she worked on this instant matter. As Executive Director, her duties included oversight of DRLC's litigation efforts. She also taught a Disability Rights class at Loyola Law School in Los Angeles. I understand that, prior to joining DRLC, Ms. Pearlman was a former Supervising Attorney at the California Women's Law Center, where she specialized in sex discrimination in employment and education. I understand that Ms. Pearlman graduated from the Southwestern University School of Law in 1982. I understand that she has served on the U. S. Access Board Courthouse Access Advisory Committee, as the board chair of the Employment Round Table of Southern California (ERTSC), as a board member of the Legal Aid Association of California, as co-chair of the Lawyer Representatives of the Central District, Ninth Circuit Judicial Conference, and as a member of the California State Bar Standing Committee on the Delivery of Legal Services.

22. I understand that Ms. Pearlman has received numerous awards including the 2010 St. Ignatius of Loyola Award, St. Thomas More Society, the 2009 "FEHA 50th Anniversary Civil Rights Award," from the California Department of Fair Employment and Housing, and she was a 2007 Legal Aid Association of California Attorney Award of Merit Recipient. She was named a "Super Lawyer" in 2009 in the area of public interest law and class actions, and

1 she was a 2007 finalist for “Attorney of the Year” for Trial Lawyers for Public
2 Justice.

3 23. I understand that Ms. Pearlman’s experience with the plaintiffs and
4 understanding of public entity work was important to filing this case. I understand
5 that Ms. Pearlman participated in depositions, settlement conferences, and
6 conferred within DRLC to discuss strategy and tasks.

7 24. A 2014 historical hourly rate of \$800 was previously approved for
8 Ms. Pearlman in *Peter Johnson v. Los Angeles County Sheriff’s Department*, Case
9 No. CV 08-03515 DDP (SHx); that order and related declaration are attached
10 hereto as Exhibits D and E.

11 25. DRLC seeks compensation for Ms. Pearlman at an hourly rate of
12 \$875, which is DRLC’s 2017 billing rate for an attorney of her experience.

13 26. Shawna L. Parks is a 1999 graduate of U.C. Berkeley School of
14 Law, and a 1995 graduate of U.C. Berkeley. I understand that from 1999-2000
15 Ms. Parks was a Fulbright Scholar in Budapest, Hungary, where she researched a
16 recently enacted nondiscrimination statute, worked on developing test litigation,
17 and co-organized a conference of Eastern European disability rights advocates.

18 27. From early 2012 through late 2013 Ms. Parks was a Director of
19 Litigation at Disability Rights Advocates in Berkeley, California. From 2005
20 through early 2012 Ms. Parks was at the Disability Rights Legal Center where she
21 was Legal Director from 2009 through late 2011. Prior to her work at the DRLC
22 Ms. Parks was a staff attorney and Equal Justice Works Fellow at Disability Rights
23 Advocates from 2000 through 2003. From 2003 through 2004 she was an associate
24 at what was then known as Schonbrun DeSimone Seplow Harris & Hoffman,
25 where she worked primarily on race and gender discrimination employment cases.
26 Ms. Parks has extensive expertise in the substantive areas of disability rights, civil
27 rights and education, including special education. She has litigated numerous
28

1 cases, including both class actions and individual cases, in these fields. Ms. Parks
2 is currently the principal attorney in the Law Office of Shawna L. Parks, which she
3 founded in 2014.

4 28. I understand that in the instant matter Ms. Parks participated in many
5 aspects of the litigation including discovery, research, settlement, motion work and
6 engaged in strategy sessions.

7 29. A 2012 historical rate of \$665 was approved for Ms. Parks in *CALIF,*
8 *et al., v. City of Los Angeles, et al.*, 2011 WL 4595993 (C.D. Cal. 2011), Case No.
9 2:09-cv-00287- CBM-RZ. A true and correct copy of that fee order is attached
10 hereto as Exhibit C. In that Order the Court describes Ms. Parks as “nationally
11 recognized as a leading disability rights attorney.” Order at 4:8

12 30. DRLC seeks compensation for Ms. Parks at an hourly rate of \$745,
13 which is DRLC’s 2017 billing rate for an attorney of her experience.

14 31. Maronel Barajas is the Litigation Director at the Disability Rights
15 Legal Center. As the Director of Litigation, she oversees all aspects of DRLC’s
16 litigation program, including supervising and litigating individual, multi-plaintiff,
17 and class action cases. This includes coordinating, supervising and providing
18 substantive expertise and support to attorney staff and legal assistants, as well as
19 law clerks and volunteers in DRLC’s two offices. Further, her duties as the
20 Director of Litigation also include negotiating co-counseling agreements, outreach,
21 grant writing, retaining experts, and budgeting. She also lectures and provides
22 training on disability rights issues in various forums and participates in legislative
23 and regulatory comment on behalf of the organization.

24 32. Ms. Barajas is a 2003 graduate of Columbia Law School and 2000
25 graduate of the University of California, Irvine. The majority of her practice has
26 focused on civil rights matters, including matters on behalf of individuals with
27 disabilities. Indeed, civil rights has been my primary focus for approximately
28 twelve years. Approximately, nine of those years have been spent on cases

1 exclusively on behalf of individuals with disabilities. During this time, she
2 litigated various cases in the area of disability rights, including individual, multi-
3 plaintiff and class action cases. These cases have primarily been against public
4 entities, and most often with the goal of system reform. Ms. Barajas has also
5 supervised attorneys in numerous lawsuits affecting the rights of people with
6 disabilities. As a result, she has developed extensive knowledge in the area of
7 disability rights cases, cases requiring policy reform, and cases involving public
8 entities.

9 33. After law school, from late 2004 through early 2005, Ms. Barajas
10 worked as a legal representative for MACS Copy and Interpreting Inc., where her
11 work focused primarily on worker's compensation matters. In early 2005, Ms.
12 Barajas joined DRLC and held various positions until she left in late 2008. These
13 positions included being an Education Advocate, Staff attorney, Associate Director
14 and ultimately Director of the Education Advocacy Program. During 2005-2008,
15 her work was exclusively on behalf of people with disabilities, with a focus on
16 matters on behalf of students with disabilities. Ms. Barajas worked on cases at the
17 administrative and federal court level. She also regularly lectured and trained on
18 issues relating to individuals with disabilities, including participating in legislative
19 and regulatory comment on behalf of the organization. By way of example, Ms.
20 Barajas was an Adjunct Professor at Loyola Marymount University in Los Angeles
21 where she taught an upper division Special Education and the Law course; guest
22 lectured at Loyola Law School's Disability Rights and Special Education Law
23 class; and wrote articles related to the rights of students with disabilities. In her
24 capacity as Director of the Education Advocacy program, she also supervised
25 attorney staff and managed DRLC's Education Advocacy Program's externship
26 program. In 2007, during Ms. Barajas tenure as the Director, the Education
27 Advocacy Program along with DRLC's litigation program was recognized as the
28 Agency Winner at the National Association of Counsel for Children in Keystone,

1 Colorado for improving the educational opportunity for students with disabilities
2 held in detention facilities and for improving the access to courts for individuals
3 with disabilities.

4 34. In late 2008, Ms. Barajas left DRLC to become an associate with the
5 former law firm of Traber & Voorhees, a prominent civil rights litigation firm in
6 Pasadena, California. Traber & Voorhees recently dissolved after one its founding
7 partners, Theresa M. Traber, was appointed to the bench. At Traber & Voorhees,
8 her focused primarily on discrimination cases in the employment, education, and
9 custodial context. Ms. Barajas handled matters at the state, federal and state
10 appellate level. She remained an associate with Traber & Voorhees until early
11 2011.

12 35. In early 2011, Ms. Barajas returned to work with DRLC as the sole
13 Senior Staff Attorney in the litigation program. In addition to focusing on impact
14 and complex litigation, she co-authored an article with Paula Pearlman, Esq. for
15 the 2011-2012 Ability magazine issue, titled “a boy and his dog” regarding a case
16 where she was lead counsel from DRLC. To my knowledge, it was the first case
17 of its kind where a federal court judge held that a student with autism had the right
18 to attend school with his service dog. Until approximately 2013, Ms. Barajas also
19 served as an Adjunct Professor at Loyola Marymount University where she taught
20 an upper division Special Education and the Law course. Ms. Barajas also
21 oversaw DRLC’s externship program with Loyola Law School until that
22 partnership ended. In 2015, she was promoted to Managing Attorney of the
23 litigation department, and in late 2016, she was again promoted, this time to
24 Director of Litigation, a position that she still holds.

25 36. I understand that Ms. Barajas participated in settlement and engaged
26 in strategy sessions.

27 37. A 2012 historical hourly rate of \$550 for a 2003 law graduate was
28 previously approved in *California in Communities Actively Living Independent and*

1 *Free, et al. v. City of Los Angeles et al.*, Case No. CV 09-0287 CBM (RZx) at
2 6:11-14; that order and related declaration are attached hereto as Exhibit C.

3 38. DRLC seeks compensation for Ms. Barajas at an hourly rate of \$675,
4 which is DRLC's 2017 billing rate for an attorney of her experience

5 39. Matthew Strugar is a 2004 graduate from the University of Southern
6 California Gould School of Law. When he worked on this matter, he was a Staff
7 Attorney with the litigation department. While at DRLC, Mr. Strugar focused on
8 class action and impact litigation centered on matters in the correctional context. I
9 understand that Mr. Strugar participated in working with plaintiff and class
10 members.

11 40. DRLC seeks compensation for Mr. Strugar at an hourly rate of \$660,
12 which is DRLC's 2017 billing rate for an attorney of his experience.

13 41. Umbreen Bhatti graduated from the University of Michigan Law
14 School in 2005. I understand that prior to joining DRLC she was an associate at
15 Latham & Watkins and later a staff attorney at the ACLU of Delaware, where she
16 managed a caseload involving civil rights cases in state and federal court and
17 before state commissions, litigating a wide variety of civil rights issues. While she
18 worked on this matter she was a Staff Attorney with the litigation department.
19 While at DRLC, Mr. Gibson focused on class action and impact litigation centered
20 on physical and programmatic accessibility for individuals with disabilities. In the
21 instant matter, I understand that Ms. Bhatti participated in settlement and engaged
22 in strategy sessions.

23 42. A 2014 historical hourly rate of \$500 was previously approved for a
24 2005 graduate in *Peter Johnson v. Los Angeles County Sheriff's Department*, Case
25 No. CV 08-03515 DDP (SHx); that order and related declaration are attached
26 hereto as Exhibits D and E.

27 43. DRLC seeks compensation for Ms. Bhatti at an hourly rate of \$640,
28 which is DRLC's 2017 billing rate for an attorney of her experience.

1 44. Carly Munson is a 2006 graduate from Boston University School of
2 Law. When she worked on this matter, she was a Staff Attorney. While at DRLC,
3 Ms. Munson focused on impact litigation centered with a focus on matters in the
4 educational context. I understand that Ms. Munson participated in drafting,
5 reviewing, and revising documents related to the complaint, investigating the
6 claims, working with the plaintiffs, motion work and settlement. Ms. Munson also
7 participated in regular conference calls with co-counsel to discuss strategy and
8 tasks and conferred within DRLC and with co-counsel.

9 45. DRLC seeks compensation for Ms. Munson at an hourly rate of \$625,
10 which is DRLC's 2017 billing rate for an attorney of her experience.

11 46. Andrea Oxman is a 2007 graduate from the University of Southern
12 California Gould School of Law. When she worked on this matter, she was a Staff
13 Attorney with the litigation department. While at DRLC, Ms. Oxman focused on
14 class action and impact litigation centered on physical and programmatic
15 accessibility for individuals with disabilities. Ms. Oxman is currently an associate
16 in private practice at Klinedinst PC. I understand that Ms. Oxman participated in
17 drafting, reviewing, and revising documents related to the complaint, investigating
18 the claims, working with the plaintiffs, discovery, motion work and settlement.

19 47. DRLC seeks compensation for Ms. Oxman at an hourly rate of \$600,
20 which is DRLC's 2017 billing rate for an attorney of her experience.

21 48. Elliot Field is a 2009 graduate from Loyola Law School. When he
22 worked on this matter, he was a Staff Attorney. While at DRLC, Mr. Field focused
23 on impact litigation centered with a focus on matters in the educational context. I
24 understand that Mr. Fields participated in depositions and worked with plaintiffs.

25 49. DRLC seeks compensation for Mr. Field at an hourly rate of \$525,
26 which is DRLC's 2017 billing rate for an attorney of his experience.

27 50. DRLC law clerks also worked on this matter. DRLC seeks
28 compensation for law clerks at an hourly rate of \$250. DRLC seeks a currently

1 hourly rate of \$250 for law clerks. DRLC relies on its law clerks primarily to do
2 legal and factual research, and did so in this matter. DRLC's law clerks are law
3 students from local law schools, including Loyola Law School.

4 51. In *California in Communities Actively Living Independent and Free*,
5 *et al. v. City of Los Angeles et al.*, Case No. CV 09-0287 CBM (RZx) the United
6 States District Court for the Central District of California found DRLC's 2012
7 rates of \$230 for law clerks reasonable; that order and related declaration are
8 attached hereto as Exhibit C.

9 52. DRLC also seeks compensation for work performed by Legal
10 Assistants at a currently hourly rate of \$250.

11 53. In *California in Communities Actively Living Independent and Free*,
12 *et al. v. City of Los Angeles et al.*, Case No. CV 09-0287 CBM (RZx) the United
13 States District Court for the Central District of California found DRLC's 2012
14 rates of \$230 for legal assistants reasonable; that order and related declaration are
15 attached hereto as Exhibit C.

16 54. The manner in which DRLC staffed this case is fairly standard for a
17 case of this size and importance.

18 55. DRLC made every effort to litigate this matter efficiently by
19 coordinating our work, minimizing duplication, and assigning tasks in a time and
20 cost efficient manner, based on the time keepers' experience levels and talents.

21 56. The attorneys at Milbank worked on this matter as co-counsel and as
22 appropriate. It was essential for the DRLC to co-counsel with the attorneys from
23 Milbank in this matter particularly given their expertise and experience with
24 litigation. The specific work that they did on the case and their rates are discussed
25 fully in the Declaration of Samir L. Vora in Support of Plaintiff's Motion for
26 Award of Attorneys' Fees and Expenses that is filed herewith.

27 //

28 //

Method of Recording Time

57. DRLC's method of recording attorneys' fees consists of recording time spent on particular cases as contemporaneously as possible with the actual expenditure of the time, in tenth of an hour increments, and submitting those time records in the regular course of business. DRLC's law clerks and support staff do the same.

Exercise of Billing Judgment and Determining the Lodestar

58. The \$200,000 in fees and costs for DRLC and Milbank attorneys combined represents only a portion of the actual hours expended by Plaintiffs' counsel in the nearly eight years this case has been litigated. In determining the reasonable attorneys' fees for work performed DRLC calculated its lodestar based on its current 2017 hourly rates as well as apportioning those fees for work attributable to County Defendants.

59. DRLC's total actual fees and costs through October 2011 is \$810,851. A true and correct copy of DRLC's billing statement is attached here to as Exhibit J.

60. In order to determine the amount of fees to apportion to County Defendants, I carefully reviewed DRLC's billing statement on an entry by entry basis in order to categorize time spent in the following categories: (a) time related to general furtherance of Plaintiff's claims in the case as a whole; and (b) time related specifically to County Defendants.

61. This resulted in 869.70 hours of time, for a total value of \$538,213.50 for time spent in general furtherance of the litigation. And, 163.90 hours of time, for a total value of \$101,812.50 for time spent related specifically to County Defendants.

62. I then equally divided the time spent in general furtherance of the litigation among all Defendants in the litigation, for a total amount of

approximately 173.9 hours of time per defendant, for a total value of \$107,642.70.

63. I then added \$101,812.50 (total value for time spent related specifically to County Defendants) and \$107,642.70 (the corresponding fraction of time spent in general furtherance of the litigation among all Defendants). This billing discretion resulted in final lodestar of **\$209, 455.20** for approximately 338 hours as applied to the County Defendants

64. In reaching the lodestar for determining DRLC's fees and costs, I carefully reviewed all of the DRLC attorneys' billing statements. In reviewing this time spent by DRLC attorneys and law clerks, I exercised billing judgment and in doing so wrote-off certain time, as appropriate.

65. Below is a table of the DRLC time-keepers on this matter, including hours and total fees attributed to its claims against the County Defendants at the time of settlement:

Attorney Name	Graduation	Billing Rate	Total Hours	Total Fees
Paula Pearlman	1982	\$875	29.10	\$25,462.50
Shawna Parks	1999	\$745	223.70	\$166,656.50
Maronel Barajas	2003	\$675	20.10	\$13,567.50
Matthew Strugar	2004	\$660	12.00	\$7,920.00
Umbreen Bhatti	2005	\$640	11.80	\$7,552.00
Carly Munson	2006	\$625	143.00	\$89,375.00
Andrea Oxman	2007	\$600	758.60	\$455,160.00
Elliot Field	2009	\$525	49.30	\$25,882.50
Law Clerks	N/A	\$250	75.90	\$18,975.00

1	Paralegals	N/A	\$250	1.20	\$300.00
2	DRLC Total Fees			1331.60	\$810,851.00
3	Subtotal of DRLC			869.70	\$538,213.50
4	Fees Spent in				
5	General				
6	Furtherance of				
7	Litigation				
8	Subtotal of DRLC			169.90	\$101,812.50
9	Fees Spent				
10	Specifically				
11	Related to County				
12	Defendants				
13	DRLC Fees				Total: \$209, 455.20
14	Apportionment to				
15	County				
16	Defendants				
17					
18					

19 66. Since the time of settlement, DRLC has expended additional time
20 negotiating and executing an amendment to the settlement agreement and in
21 preparing the preliminary approval papers as well as the instant attorneys' fee
22 motion.

23 67. I have personally reviewed all the entries and calculations in this
24 declaration. Any calculation errors in the totals of hours, fees, or expenses are
25 inadvertent and mine alone.

26 68. In addition to fees, DRLC incurred out-of-pocket costs, as
27 apportioned to County Defendants, which it has not included in its request here. As
28 with time records, costs are recorded in our system as contemporaneously as

1 possible to when they are incurred or when we are billed by a third party, and are
2 submitted by DRLC staff in the regular course of business.

3 69. The fees claimed here are for the work necessary to investigate and
4 develop Plaintiffs' claims, secure class certification, secure discovery needed for
5 trial, prepare a motion for partial summary judgment, and to achieve a resolution
6 that remedies violations of the civil rights of students in jail eligible to received
7 special education services

8 70. In my opinion, the total \$200,000 in fees and costs for DRLC and
9 Milbank attorneys combined is a reasonable figure for attorneys' fees and costs
10 particularly given the amount of work invested in this matter. The amount sought
11 by Plaintiff in this matter represents a fair and reasonable fees and costs award in
12 this case.

13
14 I declare under penalty of perjury of the laws of the United States of
15 America and the State of California that the foregoing is true and correct, and that
16 this declaration was executed on June 8, 2017 in Whittier, California.

17
18
19
20 

21 ANNA RIVERA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
CIVIL MINUTES - GENERAL

Case No. **CV 09-8943-DMG (SHx)** Date July 28, 2017

Title ***Michael Garcia v. Los Angeles County Sheriff's Department, et al.***

Present: The Honorable **DOLLY M. GEE, UNITED STATES DISTRICT JUDGE**

Kane Tien
Deputy Clerk

Anne Kielwasser
Court Reporter

Attorneys Present for Plaintiff(s)
Maronel Barajas
Anna Rivera

Attorneys Present for Defendant(s)
Justin W. Clark

**Proceedings: PLAINTIFF'S MOTION FOR AWARD OF ATTORNEYS' FEES AND
EXPENSES RELATED TO CLASS ACTION SETTLEMENT WITH
COUNTY OF LOS ANGELES [441]**

**PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION
SETTLEMENT AGREEMENT WITH COUNTY OF LOS ANGELES [449]**

The cause is called and counsel state their appearance. The Court and counsel confer.
The Court GRANTS the above-entitled motions for the reasons stated on the record. Written
orders will issue.

: 04

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 07-380 PA (FFMx)	Date	February 15, 2018
Title	Michael Nozzi, et al. v. Housing Authority for the City of Los Angeles, et al.		

Present: The Honorable	PERCY ANDERSON, UNITED STATES DISTRICT JUDGE		
Kamilla Sali-Suleyman	Not Reported		N/A
Deputy Clerk	Court Reporter		Tape No.
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:	
None		None	
Proceedings:	MOTIONS FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND ATTORNEYS' FEES		

Before the Court are a Motion for Final Approval of Class Action Settlement (Docket No. 322) and a Motion for Attorneys' Fees and Costs (Docket No. 307) filed by plaintiffs Michael Nozzi ("Nozzi") and Nidia Pelaez ("Pelaez") (collectively "Plaintiffs" or "Named Plaintiffs"). Defendants Housing Authority of the City of Los Angeles ("HACLA") and Rudolph Montiel in his official capacity^{1/} (collectively "Defendants") do not oppose either motion. A Fairness Hearing was held on January 29, 2018.

I. FACTUAL & PROCEDURAL BACKGROUND

The Section 8 housing program provides rental assistance to low-income, elderly, and disabled families. See Nozzi v. HACLA, 806 F.3d 1178, 1184 (9th Cir. 2015) ("Nozzi II"). The majority of this assistance is provided through the Housing Choice Voucher Program, which is funded and regulated by the Department of Housing and Urban Development ("HUD") and administered locally by public housing agencies such as HACLA. Id. Under this program, the renter identifies qualifying housing, the public housing agency negotiates the rent with the landlord, the public housing agency pays a rent subsidy to the landlord on behalf of the tenant, and the renter pays the balance of the rent. Id. Within parameters established by HUD, the public housing agency sets a voucher payment standard (VPS) representing the maximum subsidy that it will pay for each type of housing in a particular area. Id. at 1185. Raising the VPS will generally yield larger subsidies, while lowering the VPS will generally yield smaller subsidies. Id. Each renter's eligibility for Section 8 benefits is examined on a yearly basis. Id. "If the public housing agency decides to lower the [VPS], it must provide information about the change to all beneficiaries at their annual reexaminations following the decision, and must further advise these beneficiaries that the change will not go into effect until their following reexamination one year later." Id.

^{1/} The City of Los Angeles was originally named as a defendant, but was dismissed on May 23, 2007. (Docket No. 48.)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 07-380 PA (FFMx)	Date	February 15, 2018
Title	Michael Nozzi, et al. v. Housing Authority for the City of Los Angeles, et al.		

HACLA reduced its VPS in 2004. Under the new standard, an estimated 45% of tenants were required to pay an average of \$104 more in rent each month. Id. at 1186. HACLA notified renters of this change in a flyer sent with annual reexamination documents. Id. The flyer provided general information about the new VPS, but did not specify how the changes would affect each renter. Id. An individualized notice was not provided until a second notice sent approximately four weeks before the new subsidy would take effect for each renter. Id.

Plaintiffs, along with the now-defunct Los Angeles Coalition to End Hunger & Homelessness, initiated this action in January 2007. Id. In April 2007, the district court granted in part and denied in part a motion to dismiss. (Docket No. 42.) Plaintiffs filed a First Amended Complaint alleging violations of (1) due process of law under 42 U.S.C. § 1983, (2) rights created by 42 U.S.C. § 1437f, (3) Cal. Gov. Code § 815.6, (4) Art. I, § 7 of the California Constitution, and (5) negligence. (Docket No. 49.) The Court dismissed the second and fifth claims (Docket No. 63) and later granted Defendants' motion for summary judgment on the remaining claims (Docket No. 90). The Ninth Circuit reversed the dismissal of the fifth claim and the grant of summary judgment on the first, third, and fourth claims. Nozzi v. HACLA, No. 09-55588, 2011 WL 1167188 (9th Cir. 2011) ("Nozzi I"). On remand, the district court granted HACLA's renewed motion for summary judgment. (Docket Nos. 190, 192.) The Ninth Circuit again reversed, holding that the flyer sent by HACLA did not provide sufficient notice of the VPS change. The court found that this "failure violated both the requirements of the Voucher Program regulations and the requirements of procedural due process," as well as state law. Nozzi II, 806 F.3d at 1204. The matter was remanded "with instructions for the district court to enter summary judgment in favor of the plaintiffs on the merits of the federal and state law claims at issue on this appeal." Id.

Following remand, this Court certified two classes: (1) the Rule 23(b)(2) "Injunctive Relief Class" and (2) the Rule 23(b)(3) "Damages Class." (Docket No. 245.) The Injunctive Relief Class consists of all Section 8 beneficiaries whose benefits are administered by HACLA and who in the past received, or in the future may receive, notices of a VPS decrease. (Id.) The Damages Class consists of all HACLA Section 8 tenants, between June 1, 2005, and September 30, 2006, whose rental contribution for a period not to exceed eleven months was greater than it would have been but for HACLA's 2004 decrease in the VPS. (Id.) All Damages Class Members are also members of the Injunctive Relief Class. (Docket No. 297, Ex. A ("Settlement Agreement") ¶ 7.) The Damages Class consists of 11,870 tenants on the Damages Class Member List, and their principal damages amount to \$10,308,774. (See id. ¶¶ 9, 10; Docket No. 297, Ex. D ¶ 3.)

In February 2017, the parties filed cross-motions for partial summary judgment as to remedies. (Docket Nos. 250, 256.) Before the Court ruled on those motions, the parties filed a Stipulation for Settlement. (Docket No. 286.) On June 19, 2017, Plaintiffs filed an unopposed Motion for Preliminary Approval of Class Action Settlement. (Docket No. 296.) On July 29, 2017, the Court preliminarily approved the Settlement Agreement, as well as the appointment of JND Legal Administration ("JND") as Class Administrator, and Barrett S. Litt, Anne Richardson, and Stephanie Carroll as Class Counsel. (Docket No. 305 ("Prelim. Approval Order").)

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Plaintiffs now move for final approval of the Settlement Agreement. In addition, Plaintiffs seek approval of attorneys' fees, litigation costs, settlement administration costs, and incentive awards.

II. THE SETTLEMENT AGREEMENT

The Settlement Agreement was reached after ten years of litigation, two appeals, and two days of mediation before a retired federal judge. (See Settlement Agreement pp. 2–3.) The parties ultimately agreed that HACLA's insurers would pay a total of between \$9 million and \$9.4 million toward the "Class Fund" to settle all monetary claims of the Damages Class Members. (*Id.* at ¶ 6.) Under the Settlement Agreement, and as further explained in the motion for preliminary approval, the following expenses would be deducted from the Class Fund: attorneys' fees of less than 30% of the Class Fund; litigation costs of approximately \$220,000; expenses of approximately between \$48,000 and \$68,000 incurred by the Class Administrator, and publication expenses of approximately \$10,000 to \$12,000; Pelaez's incentive award of \$5,000; and Nozzi's incentive award of \$1,000. (*Id.* at ¶¶ 4, 22, 49, 52; Mot. for Prelim. Approval at 9; Docket No. 297, Ex. E ("JND Proposal").) The residual amount of approximately \$6 million (the "Residual Class Fund") would be available for Damages Class Member claims. (See Settlement Agreement ¶ 35.) The final Damages Class Member List was to be prepared by Plaintiffs' expert Kriegler based on information supplied by HACLA and HUD. (*Id.* at ¶¶ 9, 12.)

The Settlement Agreement required the Damages Class Members to file claims to qualify for and receive damages. (*Id.* at ¶ 35.) Pursuant to the Settlement Agreement, a Damages Class Member would be compensated up to the amount of additional rent that he or she paid as a result of the reduced HACLA subsidy, depending on the number of claimants. (*Id.* at ¶ 19.) If more claims were made than could be fully compensated by the Residual Class Fund, claimants would receive proportional reductions in their reimbursements. (*Id.* at ¶ 32.) If more than \$2 million, but less than the Residual Class Fund, was claimed, the remainder would revert to Defendants' insurers. (*Id.* at ¶ 33.) If less than \$2 million in claims were made, the difference between \$2 million and the claims made would be donated to a cy pres organization. (*Id.*) In addition, if Damages Class Members made claims, but do not cash their checks, the parties agreed that the Class Administrator would make efforts to reach them and assist them to do so; the funds from checks not cashed within one year of issuance would go to agreed upon cy pres organizations. (*Id.*)

The Settlement Agreement further provided that HACLA would treat any payment to Damages Class Members who are current recipients of Section 8 in accordance with HUD regulation 24 C.F.R. § 5.609(c)(3), i.e., as a settlement for personal injury. (*Id.* at ¶ 34.) Furthermore, HACLA would designate a person whom Damages Class Members could contact with questions about the impact of receipt of settlement funds on their Section 8 benefits. (*Id.*)

The parties also agreed upon a three-year injunction. Pursuant to the injunction provisions, HACLA, when issuing notices related to reduction of the VPS, must "simply and plainly communicate the information provided in non-technical, [sic] language that would be reasonably understandable to Section 8 tenants, at a language level commensurate with the average educational level of Section 8

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tenants. The notice shall reasonably explain the known, likely or potential impact on the tenant of the action that is the subject of the notice.” (*Id.* at ¶ 71(a).) Furthermore, any such notice involving reduction of the VPS “shall be provided to Class [C]ounsel before it is sent [to Section 8 tenants], and shall be subject to approval of Class Counsel before it is communicated to Section 8 tenants, which approval shall not be unreasonably withheld.” (*Id.* at ¶ 71(b).) Finally, HACLA is required to “use language reasonably understandable to Section 8 tenants” when communicating any new notices to tenants, other than a notice of reduction of the VPS, which are addressed by ¶ 71(a) of the Settlement Agreement. (*Id.* at ¶ 71(c).)

In return for the injunction and damages, Class Members agree to release Defendants from “all claims . . . involving violations of law or constitutional rights, including, without limitation, their due process rights under federal and California Constitutions and law, their rights under California Civil Code § 815.6 and for negligence, any other rights under any other federal, state or local law, regulation, duty, or obligation, or any other legal theory, action or cause of action, which are based upon or could be based upon or arise from the facts alleged in the lawsuit (hereafter ‘Covered Claims’).” (*Id.* at ¶ 42.) Class Members, including the Named Plaintiffs, “waive all rights to any and all claims relating to damages or reimbursement of any kind for the Covered Claims.” (*Id.* at ¶ 43.) They further “waive any and all rights to pursue, initiate, prosecute, or commence any action or proceeding before any court, administrative agency or other tribunal, or to file any complaint regarding acts or omissions by the Released Persons with respect to the Covered Claims during the Class Period that fit within the definition of the Damages Class; and further, as it relates to this waiver or Release, expressly waive the provisions of California Civil Code § 1542.” (*Id.* at ¶ 44.) Those who suffered damages but were omitted from the Damages Class Member List would not be bound by the Settlement Agreement as to claims for damages, and would be permitted to bring such claims against Defendants. (*Id.* at ¶ 10 n.1.) Finally, Damages Class Members could opt out or object if they were not satisfied with the settlement amount or other aspects of the Settlement Agreement. (*Id.* at ¶¶ 66–70.)

III. FINAL APPROVAL OF CLASS ACTION SETTLEMENT

A. Fairness of the Class Settlement

Rule 23(e) requires a district court to determine whether a proposed class action settlement is “fundamentally fair, adequate, and reasonable.” *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003). To make this determination, courts consider a number of factors, including: (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed, and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed settlement. *See id.* Also, the settlement may not be the product of collusion among the negotiating parties. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000). The Ninth Circuit has declared that a strong judicial policy favors settlement of class actions. *Class Plaintiffs v.*

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City of Seattle, 955 F.2d 1268, 1276 (9th Cir. 1992). For the following reasons, the Court finds that the Settlement Agreement is fundamentally fair, adequate, and reasonable.

1. The Strength of Plaintiffs' Case and the Risk, Expense, Complexity, and Likely Duration of Further Litigation

"When evaluating the strength of a case, the Court should evaluate objectively the strengths and weaknesses inherent in the litigation and the impact of those considerations on the parties' decisions to reach these agreements." De Santos v. Jaco Oil Co., No. 1:14-cv-0738-JLT, 2015 U.S. Dist. LEXIS 93410, at *16 (E.D. Cal. July 17, 2015). Here, prior to settlement, the parties had already litigated for more than 10 years, and endured two appeals, which ultimately resolved the issue of liability. However, whether, and to what extent, damages were available remained unresolved and cross-motions for summary judgment on that issue remained pending at the time of settlement. There remained a likelihood that the Court's ruling on those motions would have been appealed. (See Final Approval Mot. 7, 9.) In addition, failure to settle at this point would have further delayed relief for Class Members who, by definition, are (or at least were during the class period) low-income. These factors favor granting final approval of the Settlement Agreement.

2. The Amount Offered in the Settlement Agreement

The Class Fund amount is \$9,339,256.47.^{2/} The Motions for Final Approval and Attorneys' Fees seek (1) an attorneys' fee award of \$2,801,776.94; (2) reimbursement of litigation expenses of \$169,699.88; (3) incentive payments to Pelaez and Nozzi of \$5,000 and \$1,000, respectively; and (4) costs for settlement administration, totaling \$60,000. Thus, the Residual Class Fund of approximately \$6.3 million was available for claims by Damages Class Members. The Residual Class Fund was sufficient for up to approximately 58% of claims of Damages Class Members to be compensated in full. In fact, approximately 19.38% of Damages Class Members filed claims that have been approved, and thus each of those claimants will be paid in full for the decrease in rent subsidy, without interest. Claimed damages total approximately \$2,160,078.45.^{3/} (Keough Decl. ¶ 22.)

^{2/} The Settlement Agreement provided for a Class Fund that was between \$9 million and \$9.4 million, dependent upon defense fees. (Settlement Agreement ¶ 6.) The parties have concluded, after subtracting total defense fees, that \$9,339,256.47 is the total available Class Fund. (Final Approval Mot. 2; Litt Decl. ISO Final Approval Mot. ¶ 5.)

^{3/} While the Motion for Final Approval states that the value of all valid claims was \$2,218,075.26 as of December 6, 2017, the initial declaration of the Class Administrator attests that the damages for all valid claims amounted to \$2,160,078.45 as of December 20, 2017. (Compare Final Approval Mot. 3, with Litt Decl. ISO Final Approval Mot., Ex. 7 ("Keough Decl.") ¶ 22.) However, the Class Administrator has updated the number of valid claims from 2,269 in her initial declaration to 2,300 in a

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Given the increased expense and risk that would accompany continued litigation and the presence of the opt-out provision, the Court finds that the total settlement amount is reasonable and favors approval of the Settlement Agreement.

3. The Extent of Discovery Completed and the Stage of the Proceedings

Litigation in this action has been extensive and discovery was complete at the time of settlement. Furthermore, Plaintiffs hired an expert who performed extensive analysis of records held by HACLA and HUD to determine damages. The parties also engaged in two days of formal mediation before a third-party neutral. This extensive case history weighs in favor of approval of the Settlement Agreement.

4. The Experience and Views of Counsel

The Court finds that Class Counsel has sufficient experience with class action litigation to appropriately assess the legal and factual issues in this matter and determine whether the Settlement Agreement serves the interests of the Class Members. Thus, Class Counsel's belief that the Settlement Agreement is both fair and adequate weighs in favor of approval.

5. Collusion Between the Parties

To determine whether there has been any collusion between the parties, a court must evaluate whether "fees and relief provisions clearly suggest the possibility that class interests gave way to self interests," thereby raising the possibility that the settlement is the result of misconduct by the negotiators or improper incentives for certain class members. Staton, 327 F.3d at 961. Here, it appears that the Settlement Agreement was the product of informed, arm's-length negotiations between the parties. The reasonableness of the amount offered in settlement, the extensive litigation history, and the involvement of a third-party neutral further suggest an absence of collusion. Furthermore, the fees and incentive awards sought do not suggest collusion, particularly as any such award was conditioned upon approval of the Court. (See Settlement Agreement ¶¶ 49, 52); see also Rodriguez v. W. Publ'g Corp., 563 F.3d 948, 968 (9th Cir. 2009) (finding conflicts of interest where incentive agreements existed between named plaintiffs and counsel). The Court finds that the Settlement Agreement is the product of non-collusive negotiations.

^{3/}(...continued)

supplemental declaration, but has not updated the dollar value of approved claims. (Compare Keough Decl. ¶ 22, with Docket No. 330-1 ("Keough Suppl. Decl.") ¶ 12.a.) While this change in number of valid claims renders it likely that the \$2,160,078.45 figure is low, for purposes of this Order, the Court assumes it is a reasonable approximation of the value of the valid and approved claims.

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6. Presence of Governmental Participant

Pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715, Defendants notified the Attorney General of the United States and the CAFA Coordinators of the California Office of the Attorney General of the Settlement Agreement. (See Docket No. 303.) “Although CAFA does not create an affirmative duty for either state or federal officials to take any action in response to a class action settlement, CAFA presumes that, once put on notice, state or federal officials will raise any concerns that they may have during the normal course of the class action settlement procedures.” Garner v. State Farm Mut. Auto. Ins. Co., Case No. CV 08-1365 CW (EMC), 2010 U.S. Dist. LEXIS 49477, at *14 (N.D. Cal. Apr. 22, 2010). No government official has objected to the terms of the Settlement Agreement. Accordingly, this factor weighs in favor of final approval. See Noll v. eBay, Inc., 309 F.R.D. 593, 608 (N.D. Cal. 2015); Holman v. Experian Info. Sols., Inc., Case No. 11-cv-0180 CW (DMR), 2014 U.S. Dist. LEXIS 173698, at *8 (N.D. Cal. Dec. 12, 2014).

7. Reaction of Class Members to Settlement

Where a settlement agreement enjoys overwhelming support from the class, this lends weight to a finding that the settlement agreement is fair, adequate, and reasonable. Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc., 221 F.R.D. 523, 529 (C.D. Cal. 2004) (“It is established that the absence of a large number of objections to a proposed class action settlement raises a strong presumption that the terms of a proposed class settlement action are favorable to the class members.”); see also Boyd v. Bechtel Corp., 485 F. Supp. 610, 624 (N.D. Cal. 1979) (finding that objections from only 16 percent of the class was persuasive that the settlement was adequate). Class Members were provided notice of the Settlement Agreement pursuant to this Court’s order granting the motion for preliminary approval. (See infra Part III.B.)

According to the Class Administrator, there were 2,300 valid and approved claims out of 11,870 Damages Class Members, amounting to 19.38% participation of the Damages Class. (See Keough Suppl. Decl. ¶ 12.a.) Thirty-one additional Class Members filed claims that lacked signatures or were otherwise deficient, and were not timely cured.^{4/} (Id. at ¶ 12.c.) Twenty-seven claim forms were submitted by eligible Class Members but postmarked after the filing deadline of December 6, 2017.^{5/}

^{4/} Additionally, 556 claim forms were submitted by individuals who did not appear on the Damages Class List and 65 claim forms were duplicates of earlier-submitted claims forms. (Id. at ¶¶ 12.d, 12.e.) These claims were denied. (Id. at ¶¶ 12.d, 12.e.)

^{5/} At the final fairness hearing, counsel indicated that the parties were still deciding whether to accept these claims despite their untimeliness. Unless otherwise agreed upon by the Parties, claim forms not received or postmarked by December 6, 2017, shall not be paid, although those claimants shall nonetheless be bound by this Order and the Judgment.

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(Id. at ¶ 12.b.) No Class Member objected to the Settlement Agreement^{6/} and 8 Class Members opted out. (Keough Decl. ¶¶ 15, 18.) The Administrator attempted to mail notices to all Class Members, and after skip-tracing, ultimately 11,056 such notices were mailed and not returned as undeliverable. (Id. at ¶ 7.)

The settlement website created by JND tracked 13,285 unique users who registered 24,595 page views and 1,103 case document views. (Id. at ¶ 8.) The toll-free number established by JND received more than 1,775 calls (id. at ¶ 11), and JND associates spoke with 737 such callers (Keough Suppl. Decl. ¶ 8). The overall positive reaction of Class Members and lack of objections is strong evidence that the Settlement Agreement is fundamentally fair and reasonable.

B. Adequacy of Notice to the Settlement Class

Under Federal Rule of Civil Procedure 23(e), this Court must “direct notice in a reasonable manner to all class members who would be bound by the proposal.” Such notice must be “‘reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’” Klee v. Nissan N. Am., Inc., No. CV 12-08238 AWT (PJWx), 2015 WL 4538426, at *5 (C.D. Cal. July 7, 2015). The notice given in this case was reasonably calculated to reach the Damages Class. The notices described the essential terms of the Settlement Agreement, defined the classes, set forth the procedure for Damages Class Members to make claims, opt out, or file objections to the Settlement Agreement, and provided information on the date, time, and location of the Final Fairness Hearing. (Docket No. 297, Ex. C; Keough Decl. ¶ 5.) They further provided a toll-free number for Class Members to call and a website containing essential case documents. (Keough Decl. ¶¶ 8, 10.) In addition, notices were posted at HACLA offices where Section 8 tenants may have occasion to visit. (See Docket No. 325, Mendoza Decl. ¶¶ 2–3.) Finally, a notice was published in the L.A. Times for three consecutive weeks on August 18, 2017, August 25, 2017, and September 1, 2017, and a 30-day internet advertising campaign was launched on Facebook, Instagram, and Twitter to inform Class Members about the settlement. (Keough Decl. ¶ 12.) The Court therefore concludes that the notice procedures satisfied the requirements of Due Process and Federal Rule of Civil Procedure 23(e).

IV. ATTORNEYS’ FEES, LITIGATION EXPENSES, INCENTIVE AWARDS, AND ADMINISTRATION EXPENSES

A. Attorneys’ Fees

The Court is obligated to conduct a careful review of the reasonableness of requested attorneys’ fees and costs. See In re Wash. Pub. Power Supply Sys. Sec. Litig., 19 F.3d 1291, 1302 (9th Cir. 1994)

^{6/} One objection was received, but that Class Member later withdrew his objection, which involved matters distinct from the instant action or the Settlement Agreement. (See Docket Nos. 318, 319, 320; see also Litt Decl. ISO Final Approval Mot., Ex. 2.)

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(“Because in common fund cases the relationship between plaintiffs and their attorneys turns adversarial at the fee-setting stage, courts have stressed that when awarding attorneys’ fees from a common fund, the district court must assume the role of fiduciary for the class plaintiffs.”). Plaintiffs seek \$2,801,776.94 in attorneys’ fees. (Final Approval Mot. 19.) This constitutes 30% of the Class Fund created by the Settlement Agreement. In common fund cases, “where the settlement or award creates a large fund for distribution to the class, the district court has discretion to use either a percentage or lodestar method.” Hanlon v. Chrysler Corp., 150 F.3d 1011, 1029 (9th Cir. 1998). “The percentage method means that the court simply awards the attorneys a percentage of the fund sufficient to provide class counsel with a reasonable fee.” Id. The Ninth Circuit has established 25% of the common fund “as a benchmark award for attorney fees.” Id.

Class Counsel cites numerous cases in district courts and other circuits that have found up to 33% to be a reasonable fee in class action settlement. (See Attorneys’ Fees Mot. 13–14 & n.2.) Furthermore, the Ninth Circuit has concluded that “[t]he 25% benchmark rate, although a starting point for analysis, may be inappropriate in some cases. Selection of the benchmark or any other rate must be supported by findings that take into account all of the circumstances of the case.” Vizcaino v. Microsoft Corp., 290 F.3d 1043, 1048 (9th Cir. 2002) (holding that district court did not abuse its discretion in awarding 28% of common fund as attorneys’ fees). Class Counsel argues that in light of the risk involved; complexity of issues; Class Counsel’s experience, skill, and effort expended; and results obtained, 30% of the Class Fund is a reasonable fee in this case. (Attorneys’ Fees Mot. 3–9.)

“The lodestar method can ‘confirm that a percentage of recovery amount does not award counsel an exorbitant hourly rate’” In re Bluetooth Headset Prods. Liab. Litig., 654 F.3d 935, 945 (9th Cir. 2011) (quoting In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig., 55 F.3d 768, 820 (3d Cir. 1995)). Here, according to Class Counsel’s professed rates and hours worked, the lodestar calculation would be approximately \$3.3 million. (See Final Approval Mot. 17.) The Class was represented by two firms: Kaye, McLane, Bednarski, and Litt and Public Counsel. Between the two firms, ten attorneys have spent 3,735.7 hours working on this case since its inception more than a decade ago. (Litt Decl. ISO Final Approval Mot. ¶ 10; Richardson Decl. ISO Final Approval Mot. ¶ 8.)^{2/} Each of these attorneys has a rate of between \$540 and \$1150 per hour. (Litt Decl. ISO Final Approval Mot. ¶ 10; Richardson Decl. ISO Final Approval Mot. ¶ 8.) A litigation coordinator and three paralegals have rates of between \$150 and \$335 and have committed a total of 685.9 hours to this case, while three law clerks, billing at \$200 per hour, spent 96.8 hours on this case. (Litt Decl. ISO Final Approval Mot. ¶ 10; Richardson Decl. ISO Final Approval Mot. ¶ 8.)

^{2/} The Court notes disparity between the hours and rates for Public Counsel provided by Mr. Litt in his Declaration in support of the Motion for Final Approval, and those provided by Ms. Richardson in her Declaration. (Compare Litt Decl. ISO Final Approval Mot. ¶ 10, with Richardson Decl. ISO Final Approval Mot. ¶ 8.) At the Final Fairness Hearing, Class Counsel acknowledged that Ms. Richardson’s Declaration should be relied upon for such hours and rates where contradictions between the declarations exist.

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Considering the results achieved, the time expended, the risks faced in this litigation, the skill required, the quality of work, the contingent nature of the fee, the financial burden carried by Class Counsel, and awards made in similar cases, as well as the lack of Class Member objection to this fee award, the Court finds that the requested attorneys' fee award is reasonable. The Court therefore grants Plaintiffs' request for \$2,801,776.94 in attorneys' fees to be awarded from the Class Fund.

B. Litigation Costs

Plaintiffs request \$169,699.88 in litigation costs. "Reasonable costs and expenses incurred by an attorney who creates or preserves a common fund are reimbursed proportionately by those class members who benefit by the settlement." In re Media Vision Tech. Sec. Litig., 913 F. Supp. 1362, 1366 (N.D. Cal. 1996). However, expenses that should be considered part of an attorney's overhead, and therefore included within an award of attorneys' fees, should not be characterized as a litigation expense and recovered as a cost item. Id. ("An award of out-of-pocket expenses should be limited to those expenses customarily billed to a fee-paying client.") These costs are itemized in detail in the supporting declarations. (See Litt Decl. ISO Final Approval Mot. Ex. 6; Litt Decl. ISO Attorneys' Fees Mot., Ex. D.) The most expensive items include expert fees of \$118,430.50, mediation costs of \$18,000, and online research costs of \$17,094.02. The Settlement Agreement further identifies the types of costs for which Defendants agreed to reimburse Class Counsel, and the Preliminary Approval Order noted that litigation costs of up to \$220,000 could be awarded. (See Settlement Agreement ¶¶ 5, 52; Prelim. Approval Order at 3.) No Class Member objected. The Court concludes that with the exception of the online research costs of \$17,094.02 which the Court determines is part of an attorney's overhead, the requested litigation costs are reasonable. Accordingly, the Court awards \$152,605.86 in litigation costs.

C. Named Plaintiffs' Incentive Awards

Plaintiffs also seek incentive awards of \$5,000 for Pelaez in addition to her damages award, and of \$1,000 for Nozzi inclusive of his damages. (Final Approval Mot. 13.) Courts may consider the following criteria to determine whether to make an incentive award: (1) the risk to the class representative in commencing suit, both financial and otherwise; (2) the notoriety and personal difficulties encountered by the class representative; (3) the amount of time and effort spent by the class representative; (4) the duration of the litigation; and (5) the personal benefit enjoyed by the class representative as a result of the litigation. Van Vracken v. Atl. Richfield Co., 901 F. Supp. 294, 299 (N.D. Cal. 1995); see also Rodriguez, 563 F.3d at 959 (agreeing with district court that incentive award should be tied to work performed, risks undertaken, and time spent on litigation). Courts also consider "the number of named plaintiffs receiving incentive payments, the proportion of the payments relative to the settlement amount, and the size of each payment." Staton, 327 F.3d at 975; see, e.g., In re Online DVD-Rental Antitrust Litig., 779 F.3d 934, 943 (9th Cir. 2015) (holding that incentive award to class representative was permissible where "[t]he amount sought and awarded was relatively small, well within the usual norms of 'modest compensation' paid to class representatives for services performed in the class action"); Friedman v. Guthy-Renker, LLC, No. 2:14-cv-06009-ODW(AGRx), 2016 WL 6407362, at *8 (C.D. Cal. Oct. 28, 2016) (balancing the above considerations and concluding that "while

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[two of the named plaintiffs'] awards come close to the threshold of disapproval, the Court finds that their participation in this lawsuit—including responding to substantial discovery and sitting for a deposition—justifies the award.” (citation omitted)); Cox v. Clarus Mktg. Grp., LLC, 291 F.R.D. 473, 483 (S.D. Cal. 2013).

In its order preliminarily approving of the Settlement Agreement, the Court explicitly warned that final approval of an incentive award would require a more significant showing. (See Prelim. Approval Order at 6.) Despite this warning, Plaintiffs have provided little additional factual basis to support the requested incentive awards. Plaintiffs assert that Nozzi initiated this action and without him there may have been no case. (Final Approval Mot. 13.) Meanwhile, Pelaez served as Class Representative and was available for a deposition if necessary, participated in interviews with Class Counsel, and provided declarations. (Id.; Litt Decl. ISO Final Approval Mot. ¶ 2.)

Such assertions do not support the awards sought by Plaintiffs. However, the Court finds an award of \$2,500 to Pelaez, in addition to her damages award, and \$500 to Nozzi, inclusive of his damages, to be reasonable in light of their participation, and thus, grants awards to Named Plaintiffs in those amounts.

D. Settlement Administration Award

Finally, Plaintiffs seek approval of settlement administration costs. The Class Administrator has billed \$24,000 and anticipates billing another \$24,000 for administration fees. (Keough Suppl. Decl. ¶ 13.) Furthermore, the Class Administrator seeks \$12,000 in costs for publication – \$6,000 for costs associated with publication in the L.A. Times, and \$6,000 for the internet campaign. (Id. at ¶ 11.) Plaintiffs previously filed JND’s bid, in which JND estimated a total cost of \$48,000 in the event of a 25% claims rate, and noted it could reach \$68,000 if more claims were filed. (See Settlement Agreement, Ex. E.) Here, including claims that have been rejected, the Class Administrator has processed 2,979 claims, representing a 25.1% claims rate. (Keough Suppl. Decl. ¶ 12.) In its bid, JND identified the services it expected to provide depending on the number of claimants. Since then, the CEO of JND has provided declarations in which she attests to the services JND has provided, and will provide in this case. (Keough Decl.; Keough Suppl. Decl.) In addition, the parties previously sought, and the Court considered, publication costs of between \$10,000 and \$12,000, in preliminarily approving the Settlement Agreement. (See Mot. for Prelim. Approval at 9; Prelim. Approval Order at 3.) No class member has objected to such awards of administration or publication costs. Based on the evidence provided and the lack of objections, the Court finds that up to \$60,000 total to be reasonable administration and publication costs in this case, and authorizes payment of such costs to JND from the Class Fund.

Furthermore, as requested in the Proposed Order, the Class Administrator will prepare a list of all rejected claims, with the reasons for rejection, and maintain the list in its case file. The Class Administrator shall preserve all written communications from Class Members in response to the Class for at least three years. All written communications received by the Class Administrator from Class

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No.	CV 07-380 PA (FFMx)	Date	February 15, 2018
Title	Michael Nozzi, et al. v. Housing Authority for the City of Los Angeles, et al.		

Members relating to the Settlement Agreement shall be available at all reasonable times for inspection and copying by Counsel for the Parties. At the conclusion of the Class Distribution, the Class Administrator shall submit a report to the Court summarizing the payments made to the Class.

Conclusion

For the foregoing reasons, the Court finds that the Settlement Agreement is fundamentally fair, adequate, and reasonable. The Court therefore grants Plaintiffs' Motion for Final Approval of Settlement. Injunctive Relief Class Members and Damages Class Members release those claims against Defendants as set forth in the Settlement Agreement, except as to monetary damages for those Damages Class Members who timely opted out. The Court reaffirms its approval of Barrett S. Litt, Anne Richardson, and Stephanie Carroll as Class Counsel and JND as Class Administrator.

The Court also grants in part Plaintiffs' Motion for Award of Attorneys' Fees and awards \$2,801,776.94 in fees and \$152,605.86 in costs to Class Counsel to be paid by Defendants. Additionally, the Court grants \$2,500 to Pelaez as an incentive award and \$500 to Nozzi as an incentive award. Furthermore, JND's costs of up to \$60,000 are approved. Each of these awards and costs are to be paid from the Class Fund.

The Court orders Defendants to provide the Class Fund to the Class Administrator for disbursement in accordance with the terms of the Settlement Agreement. The Court further orders the Class Administrator to pay all members of the Damages Class who have filed valid claims in accordance with the terms of the Settlement Agreement. The Court will enter a Judgment consistent with this Order and the Settlement Agreement. The effective date of settlement is 30 days after the date the Judgment is entered on the Docket. (Settlement Agreement ¶ 13.)

IT IS SO ORDERED.

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19 **UNITED STATES DISTRICT COURT**

20 **CENTRAL DISTRICT OF CALIFORNIA**

21 MICHAEL NOZZI, et al.,

22 Plaintiff,

23 v.

24 HOUSING AUTHORITY OF THE
25 CITY OF LOS ANGELES, et al.,

26 Defendants.

Case No. 2:07-cv-00380-PA-FFM)

[Honorable Percy Anderson]

**PLAINTIFFS' MOTION FOR
AWARD OF ATTORNEYS' FEES
AND COSTS; MEMORANDUM OF
LAW; DECLARATIONS AND
EXHIBITS IN SUPPORT**

Date: January 29, 2018

Time: 1:30 P.M.

Place: Courtroom 9A

1 TO DEFENDANTS AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that, on January 29, at 1:30 p.m., in Courtroom 7
3 of the United States District Court for the Central District of California, 350 W. 1st
4 Street, Courtroom 9A, 9th Floor, Los Angeles, California 90012, Plaintiffs will,
5 and hereby do, move for an award of attorneys' fees and costs pursuant to the
6 terms of the Settlement Agreement and Preliminary Approval Order in this case.

7 This motion is based upon this Notice of Motion and Motion, all
8 Declarations and exhibits submitted in support of it, the papers and pleadings on
9 file in this action, and upon such other and further evidence and argument as the
10 Court deems necessary or convenient at the time of the hearing on this matter.

11 DATED: September 18, 2017 Respectfully submitted,

12 KAYE, McLANE, BEDNARSKI & LITT, LLP
13 PUBLIC COUNSEL

14 By: /s/ Barrett S. Litt
15 Barrett S. Litt
16 Attorneys for Plaintiffs
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Class Counsel seek an award of 30 % of the Class Fund (somewhere between \$2,700,000 and \$2,820,000 depending on the size of the available fund) plus an award of litigation and expert costs in the amount of \$167,350.61 (exclusive of class administration costs), out of a total class fund of between \$9 Million and \$9.4 Million. Said fees would be paid separately from payments made to class members pursuant to the provisions of the settlement agreement. The settlement agreement provides as follows regarding money distributions to class members and Class Representatives from available funds after payment of attorney's fees and costs, and class administration costs, subject to the final approval of the Court:

- a. Payment of \$5,000 to Nidia Pelaez, the designated Class Representative, in addition to her rent reimbursement. Ms. Pelaez will receive this additional amount under the Settlement Agreement because of the role that she played in the litigation. There will also be a payment to Named Plaintiff Michael Nozzi of \$1,000 (inclusive of his rent reimbursement) as compensation for his individual damages claim and for his more limited role in initiating the class action (but not ultimately acting as a class representative).
- b. Payment to the members of the class who filed claims for payment of the amount of additional rent that each Damages Class Member paid as a result of the reduced HACLA subsidy (to be proportionately reduced if the total claims filed by Damages Class Members exceed the funds available for payment to them).
- c. To the extent that the filed claims do not total the amount available for distribution to Damages Class Members, the excess funds will not be paid out and will be retained by HACLA's insurers. However, in no event will the total funds paid out to Damages Class Members, or organizations that assist Section 8 tenants, be less than \$2,000,000. (This is so that, if not enough Class

Members file claims to total \$2,000,000, the difference between the amount claimed and \$2,000,000 will be paid to organizations to be agreed upon that help Section 8 tenants.)

In addition, the parties have agreed to the entry of an injunction as follows, which provides (and has effectively provided) a substantial non-monetary benefit to the injunctive relief class members:

- a. In any future notices to Section 8 tenants, related to the Voucher Payment Standard, Defendant HACLA shall simply and plainly communicate the information provided in non-technical, language that would be reasonably understandable to Section 8 tenants, at a language level commensurate with the average educational level of Section 8 tenants, and without assuming prior knowledge. The notice shall reasonably explain the known, likely or potential impact on the tenant of the action that is the subject of the notice.
- b. Any notice within the next three years regarding reduction of the Voucher Payment Standard shall be provided to Class Counsel before it is sent, and shall be subject to the approval of Class Counsel before it is communicated to Section 8 tenants, which approval shall not be unreasonably withheld.
- c. When communicating any new notices to tenants (other than a notice of reduction of VPS to which sub-paragraph (a) above applies), HACLA will use language reasonably understandable to Section 8 tenants. For purposes of the Settlement Agreement, the Parties agree that existing notices that have been historically sent regularly to tenants without challenge, such as the RE 38 notice, notices sent to tenants when HACLA approves a rent increase requested by the landlord, when there is a bedroom downsizing, meet this standard.

II. DESCRIPTION OF PLAINTIFFS' CLAIMS

The Court is very familiar with Plaintiffs' claims since they have been addressed twice by the Ninth Circuit and by this Court's ruling on the Motion for Class Certification. In light of these extensive court rulings, the claim is described only briefly.

1 Plaintiffs are Section 8 Housing Choice Voucher Participants whose rental
 2 contributions were increased as a result of HACLA's reduction in the rental subsidy it
 3 provided to them in the period June 1, 2005, through April 30, 2007. Plaintiffs challenged
 4 the legal sufficiency of the notice they were provided for this reduction on the ground
 5 that they were entitled to a legally sufficient and understandable notice, and they
 6 contended that the notice sent indicating that HACLA was reducing the Voucher
 7 Payment Standard did not meet that standard. The Ninth Circuit ultimately granted
 8 Plaintiffs summary judgment on liability on due process and mandatory duty grounds
 9 (under 42 U.S.C. §1983 and Govt. Code §815.6) in *Nozzi v. HACLA*, 806 F.3d 1178 (9th
 10 Cir. 2015) ("*Nozzi II*"), and remanded the matter for further proceedings regarding class
 11 certification and remedy. The Court certified injunctive relief and damages classes, Dkt.
 12 245. While cross summary judgment motions were pending on the appropriate remedy,
 13 the parties reached a settlement, subject to the final approval of this Court, and these
 14 proceedings followed.

15 **III. ANALYSIS OF THE FACTORS IN DETERMINING AN APPROPRIATE** 16 **ATTORNEYS' FEE AWARD.**

17 Although not mandated by the Ninth Circuit, courts often consider the following
 18 factors when determining the benchmark percentage to be applied: (1) the result obtained
 19 for the class; (2) the effort expended by counsel; (3) counsel's experience; (4) counsel's
 20 skill; (5) the complexity of the issues; (6) the risks of non-payment assumed by counsel;
 21 (7) the reaction of the class; and (8) comparison with counsel's lodestar. *See, e.g., In re*
 22 *Heritage Bond Litigation*, 2005 WL 1594403 at 18; *In re Quintus Sec. Litig.*, 148
 23 F.Supp.2d 967, 973-74 (N.D.Cal.2001). Because this provides a useful framework for
 24 analyzing the appropriate fee award here, counsel will employ that framework in
 25 analyzing the requested fee here, although we will reverse the order of discussion.

26 **A. THE COMPLEXITY OF THE ISSUES**

27 This was unquestionably a complex case. First, class actions are generally
 28 considered one of the most complex types of litigation. "It is common knowledge that
 class action suits have a well-deserved reputation as being most complex. The

1 requirement that counsel for the class be experienced attests to the complexity of the class
 2 action.” *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977). Second, civil rights cases,
 3 even if not class actions, are generally considered complex litigation. Indeed, Congress
 4 recognized the complexity of civil rights cases when the civil rights attorneys’ fee statute
 5 (42 U.S.C. §1988) was passed in 1976. The legislative history states, “It is intended that
 6 the amount of fees awarded under S. 2278 (42 U.S.C. §1988) be governed by the same
 7 standards which prevail in other types of equally complex federal litigation, such as
 8 antitrust cases and not be reduced because the rights involved may be nonpecuniary in
 9 nature.” S.Rep.No. 94-1011, 1976 U.S.Code Cong. & Admin.News at 5913.

10 **1. The Legal Issues Here Were Complex And Novel.**

11 The issues in this case involve complex issues of constitutional law in a novel
 12 context where there was little direct authority on the question of whether the HUD
 13 regulation mandating one year’s advance notice constituted a property interest for
 14 purposes of the due process clause. Similarly, there were disputes over what kind of
 15 showing Plaintiffs had to make to establish that the notice was not understandable and
 16 violated due process. (In the first appeal, the Court found disputed facts regarding the
 17 adequacy of notice and remanded for consideration under *Mathews v. Eldridge*.) The
 18 novelty and complexity are established by the fact that the case was twice dismissed by
 19 the District Court pursuant to Defendants’ summary judgment motion on liability, only to
 20 prevail both times on appeal (the first time resulting in a remand for further proceedings
 21 and the second time resulting in a grant of summary judgment to Plaintiffs). Even after
 22 winning summary judgment on liability, there were uncertainty and pending cross
 23 summary-judgment motions on whether the violation here resulted in the right to
 24 monetary compensation for the increased rent. The case, by the time the Final Approval
 25 Motion is heard, will have gone on for nearly twelve years (including the pre-filing work
 26 and unsuccessful efforts to resolve the case before filing). Extensive paper discovery and
 27 depositions occurred; obtaining class data was heavily litigated (prior to the Ninth
 28 Circuit’s grant of summary judgment on the second appeal.)

2. The Management of the Case was Challenging.

While the liability case did not present a particular management challenge, the remedy analysis did. The HACLA data was not well suited to answer the questions that needed to be answered to identify class members, for whom there were numerous reasons for exclusion. Many hours were required of both Plaintiffs' counsel and their expert, Brian Kriegler (reflected in the tens of thousands in expert fees advanced to Dr. Kriegler's firm, Econ One). Mr. Litt, who has extensive experience in the use of data in class actions, considers the challenges of identifying class members and their loss among the most challenging he has experienced. See Declaration of Barrett S. Litt, ¶¶ 38-39 (hereafter "Litt Dec.")..

Similarly, the briefing regarding remedy presented novel and complex issues on which there was little directly applicable law. Whether Plaintiffs were entitled to the rent differential between what their rental contribution would have been absent the violation and what they actually paid was vigorously contested. Plaintiffs claimed that the defective notice was the equivalent of no notice, was void *ab initio* and rendered the increased rental requirement unlawful while Defendants contended to the contrary. Because there was a paucity of directly applicable case law, it was difficult to reliably determine the likely outcome of that dispute.

3. Reaching A Settlement Was Difficult.

Another example of complexity, and counsel's skill, arose during settlement discussions. The Defendants' position was that any money could only come from the insurance companies. At the first mediation, there was little movement from the insurance companies, and HACLA's position was that it would not (and could not) make any contribution. Only after that mediation, when Plaintiffs' counsel made a policy limits demand, did movement occur that ultimately resulted in a settlement, and then several knotty issues had to be resolved before settlement could be reached. Litt Dec., ¶31.

1 **B. THE RISKS OF NON-PAYMENT WERE SUBSTANTIAL**

2 There was substantial risk of non-payment facing plaintiffs' counsel. While
3 Plaintiffs were not concerned about their ability to collect if they were successful
4 (although, as noted, Defendants contended that they could not, and even were not allowed
5 to, use funds other than insurance funds to pay judgment), the risk lay in establishing that
6 the underlying conduct was illegal and, if so, what the appropriate remedy was. This was
7 discussed at some length in the previous section, and will not be repeated here.

8 Additionally, seeking seven figure amounts of money from government entities carries
9 inherent risks because factors other than economic risk-benefit analysis (i.e., politics) are
10 involved. See Litt Dec. ¶30

11 Further, class actions are inherently risky for a variety of reasons. Most cases filed
12 as a class action are not certified and many that are can still result in a loss, or in only a
13 partial success. Thus, there is an added level of risk in any class action. See Litt Dec.
14 ¶¶68 to 70. This case was taken with full recognition that, because there were not cases
15 previously finding a property interest in the kind of advance notice here, the case was on
16 the high end of the risk spectrum, and with the expectation that, if successful, it would
17 result in a significant fee enhancement. Litt Dec. ¶30.

18 **C. THE EFFORT EXPENDED BY COUNSEL.**

19 Including the investigation time, and pre-litigation settlement efforts, counsel
20 litigated this case for nearly twelve years. A partial list of the work performed (or to be
21 performed) includes: 1) extensive investigation of the underlying circumstances,
22 including communicating directly with class members; 2) extensive (albeit unsuccessful)
23 attempts to settle the case pre-filing; 3) preparation of the complaint and amended
24 complaint and extensive legal research related to framing the issues; 4) the Rule 26
25 conference and report; 5) propounding discovery related to liability, which included
26 extensive analysis of the relevant documents and several depositions; 6) litigating the first
27 round of summary judgment motions, which included several hearings in the District
28 Court; 7) successfully appealing the grant of summary judgment to Defendants, which

1 required opening and reply briefs and all the other work attendant on an appeal in the
 2 Ninth Circuit; 8) returning to the District Court and continuing to litigate the case, which
 3 involved further discovery, heavily contested efforts contested to obtain class data from
 4 HACLA's data bases, and again opposing (unsuccessfully) Defendants' renewed
 5 summary judgment motion ; 9) again successfully appealing the grant of summary
 6 judgment to Defendants, which this time resulted in a grant of summary judgment to
 7 Plaintiffs; 10) successfully opposing Defendants' petition for a writ of certiorari, which
 8 Opposition the Court requested after Plaintiffs decided not to file one unless requested;
 9 11) filing and winning a successful motion to certify both an injunctive relief and a
 10 damages class; 12) obtaining the class databases and retaining experts to analyze the data
 11 in a way that would allow identification of class members and their damages, which was
 12 an extremely complex endeavor (for which Plaintiffs' counsel have advanced over
 13 \$100,000; 13) filing and defending against cross-motions for summary judgment on the
 14 appropriate damages remedy; 14) preparation of an extensive mediation brief and two full
 15 day mediation sessions; 15) negotiation and preparation of lengthy settlement documents,
 16 including settlement agreement, preliminary approval order, class notice and claim forms;
 17 16) obtaining bids from qualified settlement administrators and ongoing work with the
 18 selected Class Administrator, JND; 17) yet to be done responses if objections are filed,
 19 Motion For Final Approval and proposed Final Approval Order; 18) Final Approval
 20 Hearing; and 19) continuing contact with class members offering information and
 21 assistance as requested..

22 ***D. THE RESULT OBTAINED FOR THE CLASS***

23 This case was hard fought, as we have already described. The class members are
 24 by definition low income individuals of little means. All work was performed on a
 25 contingent fee basis. The settlement was the result of arm's length negotiations entered
 26 into only after plaintiffs won summary judgment on liability and contested class
 27 certification. Even then it required extensive settlement efforts.
 28

1 The financial terms of the settlement are very favorable to class members. It is
 2 likely that every class member who files a claim will receive the full amount of his or her
 3 rental differential (the difference between the tenant's rental contribution absent the
 4 reduction in subsidy and the rental contribution the tenant actually made). Only if the
 5 claims rate reaches well over 50% would there begin to be a slight downward adjustment
 6 of class damages (depending on how many claims are filed). In addition, the settlement
 7 includes an injunctive relief order that ensures that HACLA provides understandable
 8 notice in the future.

9 This is a very favorable result for the class members and was the result of
 10 counsel's extensive and uncompensated effort over many years.

11 ***E. COUNSEL'S EXPERIENCE***

12 Class Counsel are highly experienced litigators in the fields of civil rights and class
 13 actions. The first set of counsel is Mr. Litt and attorneys in his office. Mr. Litt is a well-
 14 known civil rights lawyer in the Los Angeles area, and has extensive class action and
 15 civil rights experience, as his Declaration and CV attached to it attest. He likely has more
 16 civil rights class action experience than any attorney practicing in the Central District.
 17 The attorneys associated with him who worked on the case (primarily Paul Estuar when
 18 he was with Mr. Litt) are also experienced in these areas. Mr. Litt's CV contains a variety
 19 of attestations to his skill, experience and reputation, several from judges in this District.

20 The other set of counsel are attorneys with Public Counsel, the largest pro bono
 21 law firm in the country. The Declaration of Anne Richardson, who has 28 years of civil
 22 rights and class action experience and is the current Director of Public Counsel's
 23 Consumer Law Project, addresses the Public Counsel attorneys' work on this case.

24 All of the appointed class counsel (Mr. Litt, Ms. Richardson and Ms. Carroll) are
 25 well-known and highly regarded civil rights and public interest lawyers, and all have
 26 extensive experience dealing both with civil rights and class action litigation, as do the
 27 other primary attorneys (Paul Estuar, Lisa Jaskol and Patrick Dunlevy) who worked on
 28 the case. See Litt and Richardson Declarations.

1 **F. COUNSEL'S SKILL**

2 As addressed above, Plaintiffs' counsel in this case are highly skilled attorneys in
3 the field of civil rights and civil rights class actions. Their performance in this case, and
4 its successful outcome, attest to their skill level.

5 **G. THE REACTION OF THE CLASS**

6 As of the time of this writing, Plaintiffs' counsel has not yet received a final report
7 of the number of claims, opt-outs, or objections filed. That information will be provided
8 in connection with the final approval hearing. However, as of September 15, 2017, the
9 Claims Administrator reports receiving 1493 claims (approximately 12.5% of the 11,870
10 class members), with a value of \$1,338,753.60 (approximately 22% of the
11 approximately \$9.2 Million class fund after fees), four opt-outs, and no objections. Litt
12 Decl., ¶32. "The negligible number of opt-outs and objections indicates that the class
13 generally approves of the settlement." *In re Toys R Us-Delaware, Inc.--Fair & Accurate*
14 *Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 456 (C.D. Cal. 2014) (citing
15 *Churchill Village, L.L.C. v. General Electric*, 361 F.3d 566, 577 (9th Cir. 2004)
16 (affirming the approval of a class action settlement where 90,000 members received
17 notice and 45 objections were received).

18 **IV. THE AMOUNT REQUESTED BY PLAINTIFFS' COUNSEL IS**
19 **REASONABLE**

20 In this case, plaintiffs' counsel seek an award of \$2,700,000-\$2,820,000 (30% of
21 the available fund of \$9 Million-\$9.4 Million), plus costs. Costs are significant, primarily
22 due to the large cost of expert work to analyze the class data to determine class
23 membership and damages, totaling approximately \$167,350.61, and mediation costs.

24 It is well established in the Ninth Circuit that, while the court has discretion to use
25 either a percentage of the fund or a lodestar approach in compensating class counsel (*see*,
26 *e.g.*, *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268, 272 (9th Cir. 1989); *In re*
27 *Washington Public Power Supply System Securities Litigation*, 19 F.3d 1291, 1295 (9th
28 Cir. 1994), the percentage of the fund is the typical method of calculating class fund fees.
See, e.g., *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002) ("the primary

basis of the fee award remains the percentage method”). While most circuits leave the method used to the discretion of the trial court, “[m]ost federal courts use the percentage of the fund approach in awarding attorneys’ fees in common fund classes” *In re Enron Corp. Securities, Derivative & ERISA Litigation*, 586 F.Supp.2d 732, 748 (S.D.Tex. 2008). Thus, we discuss the requested fee based upon that method. We provide lodestar information as a cross-check, and can provide greater detail if the Court wishes.

A. THE PERCENTAGE OF THE FUND METHOD OF CALCULATING FEES IS THE BETTER METHOD TO CALCULATE FEES AND SUPPORTS THE FEE REQUEST HERE.

Class action litigation is risky by its very nature. In a Federal Judicial Center 1996 report, titled "Empirical Study of Class Actions in Four Federal District Courts: Final Report to the Advisory Committee on Civil Rules" ("FJC Report"), the Report authors studied the outcomes of four federal districts and concluded that 31.7% or less of the filed class cases resulted in successful class outcomes for plaintiffs. This does not account for the degree of success (i.e., some cases could have resulted in minimal or partial success, and they would still be in the successful claim category). Thus, an outcome such as that obtained in this case is the exception, not the rule. The FJC Report also examined the awarded fees and concluded that “attorneys’ fees were generally in the traditional range of approximately one-third of the total settlement.”

Courts and commentators recognize that the percentage of the fund approach is preferred because it more closely aligns the interests of the counsel and the class, i.e., class counsel directly benefit from increasing the size of the class fund and working efficiently. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002) (“lodestar method is merely a cross-check on the reasonableness of a percentage figure, and it is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a

reasonable fee, since the lodestar method does not reward early settlement.”)¹; Silber and Goodrich, *Common Funds and Common Problems: Fee Objections and Class Counsel’s Response*, 17 RevLitig 525, 534 (1998) (the percentage approach avoids numerous drawbacks of the lodestar approach and is preferable because “the attorneys will receive the best fee when the attorneys obtain the best recovery for the class. Hence, under the percentage approach, the class members and the class counsel have the same interest -- maximizing the recovery of the class.”). The Supreme Court has recognized that “the calculation of [reasonable] attorney’s fees under the “common fund doctrine” ... is based on a percentage of the fund bestowed on the class.” *Blum v. Stenson*, 465 U.S. 886, 900, 104 S. Ct. 1541, 1550, 79 L. Ed. 2d 891 (1984).

Among the drawbacks to the lodestar method listed by Silber & Goodrich are that the lodestar method increases the amount of fee litigation; lacks objectivity; can result in churning, padding of hours, and inefficient use of resources. When the lodestar method is used, class counsel may be less willing to take an early settlement since settlement reduces the amount of time available for the attorneys to record hours. Finally, the lodestar method inadequately responds to the problem of risk. *Id.* at pp.529-532. *See also Vizcaino.*, 290 F.3d at 1050 (“it is widely recognized that the lodestar method creates incentives for counsel to expend more hours than may be necessary on litigating a case so as to recover a reasonable fee”); *Mashburn v. National Healthcare, Inc.*, 684 F.Supp.

¹ *See also Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1266-67 & fn.3, 1271 (D.C.Cir.1993) (noting that the lodestar approach “encourages significant elements of inefficiency” by giving attorneys an “incentive to spend as many hours as possible” and “a strong incentive against early settlement”; the percentage approach “more accurately reflects the economics of litigation practice”; “the monetary amount of the victory is often the true measure of success, and therefore it is most efficient that it influence the fee award”; accordingly, “we join the Third Circuit Task Force and the Eleventh Circuit, among others, in concluding that a percentage-of-the-fund method is the appropriate mechanism for determining the attorney fees award in common fund cases”); *Camden I Condominium Ass’n v. Dunkle*, 946 F.2d 768, 774 (11th Cir.1991) (holding in a reversionary common fund case “that the percentage of the fund approach is the better reasoned in a common fund case. Henceforth in this circuit, attorneys’ fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class.”);

679, 689-91 (M.D.Ala.1988) (cataloguing criticisms of the lodestar approach to fee calculation); *Manual for Complex Litigation* 4th Ed. §14.121 (2004) (“in practice, the lodestar method is difficult to apply, time consuming to administer, inconsistent in result, ...capable of manipulation, ...[and] creates inherent incentive to prolong the litigation”).

Silber and Goodrich advocate that class fund fees should not diminish on a percentage basis, as some courts have done, because that undermines the full alignment between class counsel and the class. This is because, if the percentage of fees go down as the size of the fund goes up, a substantial increase in the size of the fund may be only marginally beneficial to the class counsel while it may be extremely beneficial to the class, with the result being that the economic interests of the class and counsel become misaligned. They also reviewed two studies of fee awards in common fund cases. One study was the FJC Report discussed above. The other study, done by National Economic Research Associates, an economics consulting firm, in 1994, found that attorneys' fees in these class actions averaged approximately 32% of the recovery, regardless of the case size, and averaged 34.74% when the fees and expenses were added together. Silber and Goodrich, *supra*, at 545-546. Silber and Goodrich conclude with the observation that a 33% fee award is both reasonable, and in line with the general market for contingent fee work. *Id.* at 546-549.

Alignment of the class' and Class Counsel's interests is best accomplished by awarding a percentage of the fund in the normal contingent fee range. In this way, class counsel are incentivized to maximize the recovery. In defining a 'reasonable fee' in representative actions, the law should 'mimic the market.' *Gaskill v. Gordon*, 160 F.3d 361, 363 (7th Cir. 1998) (“When a fee is set by a court rather than by contract, the object is to set it at a level that will approximate what the market would set.”). Attorneys “regularly contract for contingent fees between 30% and 40%.” *In re Remeron Direct Purchaser Antitrust Litigation*, 2005 WL 3008808, 16 (D.N.J. 2005)(citing cases), making the requested fee her highly reasonable in relation to the market for contingent fees.

1 The 30% figure sought here compares favorably with the general percentage of
 2 recovery awarded in cases around the country. *See Silber and Goodrich, supra*
 3 (summarizing available data and recommending that a 33% of the fund fee award is both
 4 reasonable, and in line with the general market for contingent fee work); *In re Rite Aid*
 5 *Corp. Securities Litigation*, 396 F.3d 294, 303 (3rd Cir. 2005), citing three studies ("[O]ne
 6 study of securities class action settlements over \$10 million ... found an average
 7 percentage fee recovery of 31%; a second study by the Federal Judicial Center of all class
 8 actions resolved or settled over a four-year period ... found a median percentage recovery
 9 range of 27-30%; and a third study of class action settlements between \$100 million and
 10 \$200 million ... found recoveries in the 25-30% range were 'fairly standard.'") (citations
 11 omitted).

12 Further supporting the requested award is that none of the warning signs for a
 13 settlement that may be influenced by improper favorable treatment of class counsel exists
 14 here. The class was certified through a contested motion, not by agreement, and the
 15 merits of the case were heavily litigated, including a contested petition for a writ of
 16 certiorari. Class counsel are not receiving a disproportionate distribution of the
 17 settlement, the payment of fees is not separated from the class funds and therefore
 18 counsel cannot receive excessive fees in exchange for an unfair class settlement, and the
 19 fund established, whether fully claimed or not, is a substantial one sufficient to
 20 substantially compensate class members for their losses (and to refund the full principle if
 21 the claims rate is in the 50-60% range. *See, e.g., In re Bluetooth Headset Products Liab.*
 22 *Litig.*, 654 F.3d 935, 946-947 (9th Cir. 2011).

23 While the Ninth Circuit has set a benchmark of 25% as a percentage of the fund,
 24 (see *Six Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir.1990)
 25 (establishing benchmark percentage of 25% of the fund as normal class counsel
 26 percentage of fund award)), this is an across the board benchmark, which is often
 27 adjusted upward or downward depending upon the assessment of the results, and the size
 28 of the fund. For cases under \$10 Million, the percentage is usually adjusted upward,

generally to 30% or more. *See, e.g., Hicks v. Toys "R" Us-Delaware, Inc.*, 2014 WL 4670896, at *1 (C.D. Cal. Sept. 2, 2014) (awarding 30% of the fund in a \$4 Million settlement where the Court found little risk “in any even arguably meritorious California wage and hour class action,” such as the case before the court there, and citing *In re Omnivision Technologies, Inc.*, 559 F.Supp.2d 1036, 1047–48 (N.D.Cal.2007) (“nearly all common fund awards range around 30% ... [and] absent extraordinary circumstances that suggest reasons to lower or increase the percentage, the rate should be set at 30%”); *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 297 (N.D.Cal.1995) (“the cases ... in which high percentages such as 30–50 percent of the fund were awarded involved relatively smaller funds of less than \$10 million” and concluding that, “30 % is a common percentage award” in such cases); *Cicero v. DirecTV, Inc.*, 2010 WL 2991486, at *6 (C.D. Cal. Jul. 27, 2010) (“a review of California cases in other districts reveals that courts usually award attorneys’ fees in the 30-40% range in wage and hour class actions that result in recovery of a common fund under \$10 million”); *In re: Cathode Ray Tube (Crt) Antitrust Litigation.*, 2016 WL 721680 (N.D. Cal. 2016) (awarding \$173,025,000 fee, 30 % of over \$575,000,000 megafund, in light of the eight year length of the case, the uncertain state of the applicable class action and antitrust law and the outstanding result). ²

² Numerous other cases support a 30% or higher fee. *See, g.g., Bostick v. Herbalife Int'l of Am., Inc.*, 2015 WL 12731932 (C.D. Cal. May 14, 2015) (awarding 30% of the gross settlement fund of \$17.5 Million reached before class certification motion was filed, considering *inter alia* the monetary benefit to the class “in light of the complex factual and legal issues involved in the case,” the intangible benefit of the injunctive relief obtained, the contingent nature of the representation and the risk of loss, the high level of skill and quality of class counsel’s work in a complex case); *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013) (awarding 33% of gross settlement fund where class counsel created a roughly proportional gross settlement fund in wage-and-hour case); *Wren v. RGIS Inventory Specialists*, 2011 WL 1230826, at *1 (N.D. Cal. Apr. 1, 2011) (awarding over 40% of settlement fund in wage-and-hour case, observing that throughout “the course of the litigation Class Counsel successfully defended against [Defendant's] attempts to dismiss Plaintiffs' claims and to decertify the classes and pursued Plaintiffs' claims until the point of settlement”); *In re Pac. Enterprises Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (finding district court did not abuse its discretion when awarding

B. THE FUND HERE IS THE AVAILABLE FUNDS TO BE CLAIMED, INCLUDING FEES, COSTS AND MONEY THAT MAY REVERT TO DEFENDANTS IF NOT CLAIMED.

The Ninth and other Circuits have explained that all funds recovered should be aggregated into a common fund in a class action settlement, even where the defendant pays attorneys' fees directly to class counsel as opposed to paying all sums directly into a fund, and even where funds revert to the defendant to the extent they are not claimed. Thus, in claims made or class reversion cases in this Circuit where there is a maximum fund, and unclaimed funds revert to the defendant, attorney's fees are awarded based on the gross settlement fund. See *Williams v. MGM-Pathe Commun. Co.*, 129 F.3d 1026 (9th Cir.1997) (reversing award of attorneys' fees because trial court failed to base fee award on the entire settlement, rather than the amount claimed). Other circuits are in accord.³

33% fee award in light of "the complexity of the issues and the risks"); *Franco v. Ruiz Food Prod., Inc.*, No. 1:10-CV-02354-SKO, 2012 WL 5941801, (E.D. Cal. Nov. 27, 2012) (approving 33% of the Maximum Settlement Fund "in two year old wage-and-hour action, in part, because the "case was actively litigated and significant time was spent on discovery," and, "[o]verall, the specialized skill of Class Counsel in this area of the law was generally an asset to the Class Members and the quality of work performed was good"); *In re Heritage Bond Litig.*, No. 02-ML-1475-DT, 2005 U.S. Dist. LEXIS 13555, at *65 (C.D. Cal. June 10, 2005) ("[t]he experience of Class Counsel also justifies the [33%] fee award requested"); *In re Activision Sec. Litig.*, 723 F. Supp. 1373, 1377 (N.D. Cal. 1989) ("nearly all common fund awards range around 30%").

³ See *Waters v. Int'l Precious Metals Corp.*, 190 F.3d 1291, 1295 (11th Cir.1999) (distribution of attorneys' fees are to be based upon the funds available to eligible claimants, whether claimed or not; affirming a fee award nearly twice the amount actually claimed by the class from the fund); *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 437 (2nd Cir. 2007) (the "entire Fund... is created through the efforts of counsel at the instigation of the entire class"; an "allocation of fees by percentage should therefore be awarded on the basis of the total funds made available, whether claimed or not"); *Landsman & Funk, P.C. v. Skinder-Strauss Associates*, 639 Fed. Appx. 880, 884 (3d Cir. 2016) (holding that the lower court "properly relied on the entire fund as the appropriate benchmark for assessing the size of the fund created" for the purpose of calculating a fee award, as opposed to calculating fees based on the amount claimed by class members); cf. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 480, 100 S. Ct. 745, 750, 62 L. Ed. 2d 676 (1980) (observing that absent class members' "right to share the harvest of the lawsuit upon proof of their identity, whether or not they exercise it, is a benefit in the fund created by the efforts of the class representatives and their counsel").

1 Fees, litigation costs and class administration costs are included in determining the
 2 size of the fund. *See, e.g., Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003)
 3 (“constructing a hypothetical ‘fund’ by adding together the amount of money Boeing
 4 would pay in damages to members of the class ..., the amount of fees provided to various
 5 counsel, the cost of the class action notices paid for by Boeing, and a gross amount of
 6 money ascribed to all the injunctive relief contained in the agreement”; court accepted the
 7 concept but not its application there); *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241,
 8 245 -246 (8th Cir. 1996)(although “technically” defendant would pay fees directly rather
 9 than their being paid “out of the class' recovery... in essence the entire settlement amount
 10 comes from the same source”; even if “the fees are paid directly to the attorneys, those
 11 fees are still best viewed as an aspect of the class' recovery”, and, “[a]ccordingly, the
 12 direct payment of attorney fees by defendants should not be a barrier to the use of the
 13 percentage of the benefit analysis”), citing *In re General Motors*, 55 F.3d 768, 821 (3rd
 14 Cir. 1995) (the “rationale behind the percentage of recovery method also applies in
 15 situations where, although the parties claim that the fee and settlement are independent,
 16 they actually come from the same source”); *In re Cendant Corp. PRIDES Litigation*, 243
 17 F.3d 722, 734 (3rd Cir. 2001) (“[t]hough this is not a traditional common-fund case,
 18 because the unclaimed portion of the settlement fund is returned to Cendant and because
 19 the plaintiffs who recover may not be affected by the attorneys' fee award (depending on
 20 the number of plaintiffs who recover rights from the fund), use of the percentage-of-
 21 recovery method is appropriate in this case”).

22 **C. ALTHOUGH A LODESTAR CROSS-CHECK IS UNNECESSARY, IT MORE THAN**
 23 **SUPPORTS THE FEE REQUESTED HERE.**

24 A lodestar cross-check is not required in this circuit, and, in a case such as this, is
 25 likely not a useful reference point. *See, e.g., Glass v. UBS Financial Services, Inc.*, 2007
 26 WL 221862, 16 (N.D.Cal. 2007). In *Glass*, no lodestar cross-check was required by the
 27 Court where an early settlement resulted in exceptional results for the class even though
 28 some class members and the New York attorney general objected to the 25% of the fund
 request as excessive. The *Glass* Court awarded fees of \$11,250,000 where, as here, the

1 \$45 Million fund was subject to a reversion for unclaimed funds so that the actual fund
 2 could end up being substantially less than the theoretical fund. Here, the case was heavily
 3 litigated, and, as of this motion, there have been no objections. Litt Decl., ¶32.

4 In discussing the lodestar, we use current rates to adjust for delay in payment. *See*,
 5 *e.g.*, *Missouri v. Jenkins*, 491 U.S. 274, 282, 109 S.Ct. 2463, 105 L.Ed.2d 229 (1989)
 6 (“an appropriate adjustment for delay in payment—whether by the application of current
 7 rather than historic hourly rates or otherwise—is within the contemplation of the statute
 8 [42 U.S.C. § 1988]”); *Barjon v. Dalton*, 132 F.3d 496, 502–03 (9th Cir. 1997) (“the
 9 district court may choose to apply either the attorney's current rates to all hours billed or
 10 the attorney's historic rates plus interest”). Generally, for a “fee award to be reasonable, it
 11 must be based on current, rather than historic, hourly rates.” *Charlebois v. Angels*
 12 *Baseball LP*, 993 F. Supp. 2d 1109, 1119 (C.D. Cal. 2012) (lodestar award in settled class
 13 action, citing *Missouri v. Jenkins*). The *Charlebois* Court went on to note that the
 14 increase to current rates

15 “is justified by comparable increases in the market. *See Coles v. City of Oakland*,
 16 No. C03–2961 THE, 2007 WL 39304, *7 (N.D.Cal. Jan. 4, 2007) (rejecting
 17 defendants' argument that rate increases should not surpass the rate of inflation and
 18 stating ‘the focus of the rate analysis is to ensure that fees are awarded at
 19 ‘prevailing market rates in the relevant community,’ and such rates may be
 20 affected by factors other than inflation, such as attorneys' additional years of
 21 experience or changes in the legal market’) (quoting *Blum v. Stenson*, 465 U.S.
 22 886, 895, 104 S.Ct. 1541, 79 L.Ed.2d 891 (1984)); *Parker v. Vulcan Materials Co.*
 23 *Long Term Disability Plan*, No. EDCV 07–1512 ABC (OPx), 2012 WL 843623,
 24 *7 (C.D.Cal. Feb. 16, 2012) (approving as reasonable an approximate 10 percent
 25 increase between 2011 rates and 2012 rates and because ‘[i]t is common practice
 26 for attorneys to periodically increase their rates for various reasons, such as to
 27 account for expertise gained over time, or to keep up with the increasing cost of
 28 maintaining a practice’); *LaPeter v. Canada Life Ins. Co. of Am.*, No. CV06–121–

1 S–BLW, 2009 WL 1313336 *3 (D.Idaho May 11, 2009) (‘It is typical for rates to
2 increase on a yearly basis and, also, for associates' and paralegals' rates to increase
3 as they gain more experience.’).”

4 Because the requested fee is not based on the lodestar, “a less exhaustive
5 cataloging and review of counsel's hours” is involved than where the fee is based on a
6 lodestar directly. *See, e.g., Victoria Secret Stores, LLC*, 2008 WL 8150856, at *9 (C.D.
7 Cal. July 21, 2008) and cases cited therein. Nonetheless, we provide detailed timesheets
8 in the event the Court wishes to review them. All the time records submitted were
9 contemporaneously maintained with two exceptions.⁴

10 For purposes of the lodestar cross-check, the tables below show each person for
11 whom time has been billed, that person’s position and years of practice, the hours worked
12 (through August 31, 2017) and the hourly rate used to bill for that person’s time (using
13 current rates) for the firms in which Mr. Litt worked during the pendency of the case
14 (which changed over the course of the twelve years of work) and for Public Counsel.
15 Some qualifications and explanations are in order. The Litt firms had eleven billers who
16 billed under 15 hours on the case; all of those were eliminated. Paul Hughes is listed
17

18 ⁴ As is explained in the Anne Richardson Declaration, the time records of two Public Counsel attorneys
19 could not be located. Hernán Vera’s records are no longer available. Mr. Vera left his position
20 as Executive Director of Public Counsel in 2014 and has submitted a Declaration attesting that
21 his reconstructed time is correct. Lisa Jaskol left Public Counsel in 2016 to become a Superior
22 Court judge, and her contemporaneous time records cannot be found; she has similarly
23 submitted a Declaration that the reconstructed time is correct. While contemporaneous time
24 records are preferred, reconstructed records are acceptable when adequately supported. *See, e.g.,*
25 *United States v. \$12,248 U.S. Currency*, 957 F.2d 1513, 1521 (9th Cir.1991) (accepting
26 “reconstructed records developed by reference to litigation files and other records”); *Rosenfeld*
27 *v. U.S. Dep't of Justice*, 904 F. Supp. 2d 988, 1005 (N.D. Cal. 2012) (“[b]asing the attorneys’
28 fee award in part on reconstructed records developed by reference to litigation files and other
records’ is an established practice in this circuit”) (quoting *Bonnette v. California Health and*
Welfare Agency, 704 F.2d 1465, 1473 (9th Cir.1983). Here, the reconstructed time constitutes a
small percentage (approximately 6%) of the lodestar (otherwise based on contemporaneous
time records). The file in this case establishes that massive time was spent by both sides
litigating it.

under the Litt firms but is actually a partner in the appellate section at Mayer Brown (and co-director of the Yale Law School Supreme Court Clinic); Mr. Litt associated him in specifically to work on the (successful) opposition to the Petition for Certiorari given his experience and expertise in opposing such petitions. His hours are based on the bill he sent to Mr Litt after the Supreme Court activity ended. The \$730 rate charged for Mr. Hughes, who regularly does retained work, is his current standard rate for retained work at Mayer Brown. The Litt firm also has billed for Patrick Dunlevy, who had worked on the case when he was at Public Counsel and was brought in by Mr. Litt to assist after Mr. Dunlevy left Public Counsel. Each of the billers for the Litt firms, and an explanation of the role they played, is discussed in Mr. Litt's Declaration. All Litt firm time was contemporaneously recorded. See Litt Dec., ¶¶28, 31.

LITT FIRM BILLERS					
Biller	Position	Years Practice (Grad Yr)	Rate	Hours	Total
Barrett S. Litt	Attorney	48 years (1969)	\$1150	1189	\$1,367,350
Paul Estuar	Attorney	24 years (1993)	\$765	516.1	\$394,816.50
Pat Dunlevy	Attorney	25 years (1992)	\$750	324	\$243,000
Paul Hughes	Attorney	9 years (2008)	\$730	60	\$43,800
Stacey Brown	Attorney	11 years (2006)	\$600	22.1	\$13,260
Julia White	Sr. Paralegal		\$335	504.1	\$168,873.50
Miguel Villafuerte	Jr. Paralegal		\$150	42.3	\$6,345
Charla Gray	Law Clerk		\$200	39.8	\$7,960
James Debergh	Law Clerk		\$200	27.1	\$5,420
Jonathan Dale	Law Clerk		\$200	29.5	\$5,900
TOTAL					\$2,256,725

PUBLIC COUNSEL BILLERS					
Biller	Position	Years Practice (Grad Yr)	Rate	Hours	Total
Hernán Vera	Attorney	23 Years (1994)	\$750	160.6	\$120,450
Lisa Jaskol	Attorney	29 Years (1988)	\$850	75.6	\$64,260
Anne Richardson	Attorney	28 Years (1989)	\$850	146.7	\$124,695
Stephanie Carroll	Attorney	13 Years (2004)	\$640	945.8	\$605,312
Pat Dunlevy	Attorney	25 years (1992)	\$750	195	\$146,250
Adelaide Anderson	Attorney	2010 (7 years)	\$540	19.9	\$10,746
TOTAL					1,071,713

Based on these hourly rates (which are the rates these attorneys would seek in an awarded statutory fee motion), the lodestar through August 31, 2017 is \$3,328,438. This does not account for the remaining work, which includes work done after August 31 on this motion, the yet to be drafted motion for Final Approval and Order, responses to objections to the extent necessary, and ongoing work with the Class Administrator and class members as needed (which time will be provided for the Final Approval Hearing).

D. THE HOURS SPENT ON THE CASE ARE REASONABLE

The hours spent by Plaintiffs' counsel to assess the lodestar cross-check are reasonable. Hours are reasonable if "at the time rendered, [they] would have been undertaken by a reasonable and prudent lawyer to advance or protect his client's interest in the pursuit of a successful recovery" *Moore v. James H. Matthews & Co.*, 682 F.2d 830, 839 (9th Cir. 1982) (internal quotations omitted); *see also Ramon v. County of Santa Clara*, 173 Cal. App. 4th 915, 925 (Cal. Ct. App. 2009). In making that determination, courts must look at "the entire course of the litigation, including pretrial matters, settlement negotiations, discovery, litigation tactics, and the trial itself" *Vov. Las Virgenes Municipal Utility Dist.*, 79 Cal.App.4th 440, 447 (2000); *see also Peak-Las Positas Partners v. Bollag*, 171 Cal. App. 4th 101, 114 (2009) (fees reasonable because of complexity of issues, results obtained, and defendants' aggressive litigation).

1 As the Ninth Circuit has recognized, civil rights lawyers working without payment
 2 from their clients have little to gain from “churning” a case. “[L]awyers are not likely to
 3 spend unnecessary time on contingency fee cases in the hope of inflating their fees. The
 4 payoff is too uncertain, as to both the result and the amount of the fee.” *Moreno v. City of*
 5 *Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008). Accordingly, they should be fully
 6 compensated for taking the steps that they reasonably believe are necessary to *win* the
 7 case: “By and large, the court should defer to the winning lawyer’s professional judgment
 8 as to how much time he was required to spend on the case; ***after all, he won, and might***
 9 ***not have, had he been more of a slacker.***” *Id.* (emphasis added).

10 Counsel have presented detailed evidence of the time spent litigating this case for
 11 the past twelve years. See Exhibit C to Litt Declaration. The substantial time spent was
 12 justified in the context of this litigation. In any event, since this is a percentage of the
 13 fund fee claim, any unnecessary hours do not increase Plaintiffs’ fee.

14 ***E. THE HOURLY RATES THAT PLAINTIFFS’ COUNSEL WILL RECEIVE UNDER***
 15 ***THE 30% FEE AWARD ARE REASONABLE.***

16 The listed rates in the foregoing table are amply supported. The evidence submitted
 17 attests to the skill, experience and reputations of the lead attorneys in this case. Lead
 18 counsel Mr. Litt has been recognized as a Super Lawyer every year between 2005 and the
 19 present, is named in Best Lawyers In America, and was described in 2014 by one court in
 20 this District as “one of the leading civil rights attorneys in the country.” See Litt
 21 Declaration, ¶¶ 5, 12. His CV identifies numerous certified class actions in which he has
 22 been the, or one of the, lead counsel as well as pending class actions. Ms. Richardson has
 23 provided evidence of her skill, experience and reputation. She has been a Super Lawyer
 24 every year since 2004. The experience and qualifications and reputation of the lawyers is
 25 addressed in the accompanying Litt and Richardson Declarations.

26 The Declaration and supporting exhibits of Mr. Litt and Carol Sobel have provided
 27 ample citations from a variety of sources to support the rates used for the lodestar
 28 comparison. (As their Declarations explain, both Mr. Litt and Ms. Sobel have been
 identified by courts as experts on attorney fee rates in Southern California.)

1 The submitted evidence includes numerous attorney fee awards in civil rights cases
 2 (either direct fee awards or lodestar cross-checks in class actions) and consumer class
 3 actions using or awarding rates comparable to those requested here (or in which rates are
 4 comparable to those requested after accounting for the general increase in rates in Los
 5 Angeles in intervening years). In addition, Plaintiffs identified numerous commercial rate
 6 awards or commercial fees charged to clients at similar or higher rates. Congress
 7 expressly recognized that fees in federal civil rights cases should be comparable to those
 8 in complex federal civil litigation. *See City of Riverside v. Rivera*, 477 U.S. 561, 575-76
 9 (1986) (“Congress made clear that it ‘intended that the amount of fees awarded under
 10 [§1988] be governed by the same standards which prevail in other types of equally
 11 complex Federal litigation.’” (citing S. Rep. No. 94-1011, at 6 (1976), *reprinted in* 1976
 12 U.S.C.C.A.N. 5908, 5913)).

13 In this lodestar cross-check, whose purpose is to “alert[]the trial judge that when
 14 the multiplier is too great, the court should reconsider its calculation under the
 15 percentage-of-recovery method, with an eye toward reducing the award”(*In re Rite Aid*
 16 *Corp. Securities Litigation*, 396 F.3d 294, 306, 60 Fed. R. Serv. 3d 851 (3d Cir. 2005), as
 17 amended, (Feb. 25, 2005), the Court need not make an independent determination that
 18 each rate is reasonable. The Court is essentially ensuring that Plaintiffs’ counsel do not
 19 receive a “windfall.” *In re Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine)*
 20 *Prod. Liab. Litig.*, 553 F. Supp. 2d 442, 467 (E.D. Pa. 2008), *as corrected* (Apr. 9, 2008).

21 Whether the Court would award these rates in this case in a pure statutory fee
 22 motion is not the issue in this motion because, while multipliers are generally not
 23 available (see *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 553–57, 130 S. Ct. 1662,
 24 1673–75, 176 L. Ed. 2d 494 (2010)) in statutory fee cases, they are expected, indeed
 25 required, in successful class action litigation where the fund is sufficient. *See, e.g., In re*
 26 *Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299–300 (9th Cir. 1994)
 27 (reversing denial of risk multiplier in class action; noting that, “[i]f this ‘bonus’
 28 methodology did not exist, very few lawyers could take on the representation of a class

client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing” and that “courts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases,” and distinguishing common fund cases from fee shifting awards because the class pays the attorneys from the common fund); *Fischel v. Equitable Life Assur. Soc’y of U.S.*, 307 F.3d 997, 1008 (9th Cir. 2002) (“It is an abuse of discretion to fail to apply a risk multiplier... when (1) attorneys take a case with the expectation that they will receive a risk enhancement if they prevail, (2) their hourly rate does not reflect that risk, and (3) there is evidence that the case was risky.”); *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 741 (9th Cir. 2016) (“the district court must apply a risk multiplier to the lodestar” where the foregoing conditions exist). This case was taken with the expectation that of a risk enhancement; discounted hourly rates would not reflect that risk; and the case was indisputably risky.

While the foregoing cases do not identify a benchmark multiplier, “[e]mpirical evidence of multipliers across many cases demonstrates that most multipliers are in the relatively modest 1–2 range,” which “counsels in favor of a presumptive ceiling of 4, or slightly above twice the mean.” Rubinstein, *Newberg on Class Actions* § 15:87 (5th ed.).⁵

Class Counsel seek a fee award of \$2,700,000 to \$2,820,000 depending on the size of the fund available after defense litigation attorneys’ fees and costs, plus an additional

⁵ In practice, many cases have awarded multiplier above four where the Court found it appropriate. See *Craft v. Cnty. of San Bernardino*, 624 F. Supp. 2d 1113, 1125 (C.D. Cal. 2008) (multiplier of 5.2 in \$25.5 Million settlement based on award of 25% of fund, collecting cases with high multipliers). Multipliers above two are common where the fund supports it. See, e.g., *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 (9th Cir. 2002) (risk multiplier appropriate on percentage of fund award in megafund settlement resulting in 28.5% of the fund and a multiplier of 3.65). *Vizcaino* contains an Appendix listing percentage and multipliers in several megafund cases, and is enlightening on the norm even in megafund cases. It lists 46 cases, the smallest of which is a \$53 Million fund, and the largest of which is a \$193 Million fund. Of those 46 cases, 30 received a multiplier (eight with a multiplier between 1.2-1.8, twelve with a multiplier between 2.0-2.5, six with a multiplier between 3.0-3.6, three with a multiplier between 4.0-6.2, and one with a multiplier of 19.6). Despite the fact these were mega-fund cases, where percentages of the fund are generally smaller, ten awarded percentages of the fund between 30-40%.

1 \$167,350.61 through August 31, 2017 (to be supplemented with a final accounting) for
 2 litigation costs. The total hours in the case through August 31, 2017 are 4297.60. The
 3 lodestar through August 31, 2017, using Plaintiffs' counsel claimed rates, is \$3,328,438.
 4 Plaintiffs estimate an additional 200 plus hours for the work performed after August 31
 5 on the fee motion, the final approval motion and order and related work.

6 Thus, if the rates submitted are used to calculate the lodestar, the award Plaintiffs'
 7 counsel will receive is in the range of 80% of the lodestar. Even using substantially lower
 8 rates, the multiplier would likely be under 1.5. Plaintiffs' counsel have addressed the risk
 9 in class actions generally, the risks in this case given the absence of clear authority on the
 10 property interest in advance notice under the HUD regulation, and the expectation of a
 11 substantial multiplier if the case were successful.

12 Where Plaintiffs' counsel obtain an expeditious and "excellent result" in a
 13 "complex and risky case", they are entitled to a fully compensatory award. *See Stop &*
 14 *Shop Supermarket Co. v. SmithKline Beecham Corp.*, 2005 WL 1213926 (E.D. Pa. May
 15 19, 2005). This was a risky, exceptionally protracted and complex case, where there was
 16 a substantial risk that Plaintiffs would not prevail, and, even if they prevailed on liability
 17 as they ultimately did, there remained a risk that that a court would not award monetary
 18 damages based on the claim of entitlement to the difference between the rental
 19 contribution the tenant actually and the lowered rental contribution they should have been
 20 paying during the one year notice period, regardless of individual circumstances (an
 21 issue unresolved at the time of settlement). The "skill and experience brought to bear by
 22 counsel throughout the year[s] they spent actively litigating this case" justifies a
 23 substantial fee award, a conclusion reinforced "by the high caliber of Plaintiffs' counsels'
 24 work in this case." *Id.*

25
 26 ***F. FAILING TO AWARD THE FEES AND COSTS REQUESTED WOULD FRUSTRATE
 27 THE PURPOSES OF CLASS ACTIONS IN THE CONTEXT OF THIS SETTLEMENT.***

28 As *Lopez v. Youngblood*, No. CV-F-07-0474 DLB, 2011 WL 10483569, at *14
 (E.D. Cal. Sept. 2, 2011) explained, "[w]here... class members are receiving a substantial
 monetary recovery, and the interests of the class members and counsel are aligned, i.e.,

1 class counsel is not receiving an unreasonable proportion of the total recovery,” the court
 2 should consider that “one important purpose of the class action device is that defendants
 3 should not benefit from their wrongdoing, and should be deterred from doing so by being
 4 vulnerable to class actions to remedy their wrongful conduct.” (Citing, Richard A.
 5 Posner, *Economic Analysis of Law* 626–27 (5th ed.1998) (“the most important point from
 6 an economic standpoint is that the violator be confronted with the costs of his violation-
 7 this achieves the allocative purpose of the suit not that he pays them to his victims”);
 8 John C. Coffee, Jr., *Reforming the Securities Class Action: An Essay on Deterrence and*
 9 *Its Implementation*, 2–3 (Columbia Law. Sch. Ctr. for Law & Econ. Studies, Working
 10 Paper No. 293, 2006) (available at http://ssrn.com/abstract_id=893833). *See also* Myriam
 11 Gilles, *Exploding The Class Action Agency Costs Myth: The Social Utility Of*
 12 *Entrepreneurial Lawyers*, *University of Pennsylvania Law Review*, 155 U. Pa. L. Rev.
 13 103 (November 2006).

14 **V. THE COSTS ARE REASONABLE.**

15 Plaintiffs seek \$167,350.61 in costs, which are primarily for expert and mediation
 16 costs (plus other chargeable costs). See Litt Dec. ¶ 68; Exhibit D. These costs, primarily
 17 reimbursement for out of pocket costs for experts, mediation and litigation costs, are
 18 reasonable, and the Court should award costs (exclusive of class administration) in that
 19 amount (as supplemented by costs to be supplemented for the Final Approval hearing).
 20 Nontaxable cost reimbursement is authorized by Rule 23(h), and “include[s] counsel's
 21 out-of-pocket expenses that would normally be charged to a fee paying client.” *Newberg*
 22 *on Class Actions* §16:10 (5th ed.). In class actions, expenses that “are of the type that law
 23 firms typically bill to their clients ... include such things as: mediator fees, expert fees,
 24 computer research, photocopying, postage, meals, and court filing fees”). *Yang v. Focus*
 25 *Media Holding Ltd.*, 2014 WL 4401280, *19 (S.D.N.Y. 2014).

26 **VI. CONCLUSION**

27 For the foregoing reasons, Plaintiffs respectfully request that the Court award 30%
 28

1 of the class fund as attorneys' fees plus litigation, consulting and expert costs in the
2 amount of \$167,350.61.

3 Dated: September 18, 2017

Respectfully Submitted,

4 KAYE, MCLANE, BEDNARSKI & LITT
5 PUBLIC COUNSEL
6

7 By: ___/s/ Barrett S. Litt_____
8 Barrett S. Litt
9 Attorneys for Plaintiff
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1 **Proof of Service**

2 I am employed in the County of Los Angeles, State of California. I am over the age of
3 eighteen and not a party to the within action. My business address is 3435 Wilshire Blvd.,
4 Suite 2910, Los Angeles, CA 90010.

5 On May 23, 2018, I served the within document(s) described as:

6 **Petitioner's Notice of Motion and Motion for Award of Attorney's Fees;**
7 **Memorandum of Points and Authorities; Declarations of Colleen Flynn and Carol A. Sobel**

8 on the interested parties in this action as stated below:

9 Jeffrey Briggs
10 Briggs Law
11 6464 Sunset Blvd., Suite 715
Hollywood, CA 90028

12 by electronic mail.

13 I declare under penalty of perjury under the laws of the State of California that the
14 foregoing is true and correct.

15 Executed on May 23, 2018, at Los Angeles, California.

16
17 Colleen Flynn
18 (print name)



(Signature)